SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 40

CHRYSLER CORPORATION, DE SOTO MOTOR CORPORATION, PLYMOUTH MOTOR CORPORATION, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

No. 41

COMMERCIAL CREDIT COMPANY, COMMERCIAL CREDIT CORPORATION, ETC., ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA

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[fol. 1] [Caption omitted]

[fol. 2]

IN DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVISION

In No. 9 Civil

UNITED STATES OF AMERICA, Complainant,

v.

CHRYSLER CORPORATION, et al., Defendants

COMPLAINT—Filed November 7, 1938

To the Honorable the Judge of the District Court of the United States for the Northern District of Indiana, Sitting in Equity:

The United States of America, by James R. Fleming, United States Attorney for the Northern District of Indiana, acting under the direction of the Attorney General of the United States, brings this proceeding in equity against Chrysler Corporation, De Soto Motor Corporation, Plymouth Corporation, and Commercial Credit Company, all of which are organized and duly authorized to do business under the laws of the State of Delaware; the Chrysler Sales Corporation and Dodge Brothers Corporation, both organized and duly authorized to do business under the laws of the State of Michigan; the Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Pennsylvania; the Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Iowa; Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Michigan; Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Minnesota; Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Missouri; Commercial Credit Company, a corporation [fol. 3] organized and duly authorized to do business under

the laws of the State of Illinois; Commercial Credit Company, Inc., a corporation organized and duly authorized to do business under the laws of the State of Wisconsin; Commercial Credit Corporation, a corporation organized and duly authorized to do business under the laws of the State of New Jersey; Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Indiana; all of which corporations have and have had at all material times branch offices and places of business in nearly all of the several states, and are doing business therein, including the State of Indiana, the Northern District, South Bend Division, and complains and alleges upon information and belief as follows:

I

That defendant, Chrysler Corporation, is engaged in the manufacture and sale of Chrysler, Dodge, De Soto and Plymouth automobiles; that defendants, Dodge Brothers Corporation, De Soto Motor Corporation, Plymouth Motor Corporation and Chrysler Sales Corporation, are engaged in the purchase, sale and distribution of Chrysler cars (Chrysler cars when referred to herein include Chrysler, De Soto, Dodge and Plymouth cars); that the five last named corporations are associated together and commonly called the Chrysler Group (when the term Chrysler Group is used hereinafter it will include the aforesaid five corporations); that the remaining defendants herein are engaged in the business of financing the purchase and sale of automobiles, including Chrysler automobiles, by advancing funds to automobile dealers for the purchase at wholesale and to the public at retail of such automobiles; that de- [fol. 4] fendant, Commercial Credit Company of Delaware, a corporation, is both a holding company and an operating company and owns 100% of the capital stock of all of the other defendant finance companies named hereinabove and controls such companies; that all of the aforesaid defendant finance companies are associated together (when the term Commercial Credit Company is used hereinafter it shall be taken to include all of the defendant finance companies); that in the year 1925, the Chrysler Corporation became desirous of creating a relationship between itself and a finance company by which the sale of automobiles to dealers and to the public would be facilitated, and under which credit

might be extended so that the output of the Chrysler Corporation might be increased and a system of selling cars on conditional sale to the public fostered; that as a result thereof the Chrysler Corporation in 1925, and thereafter in 1926, entered into written contracts with the Commercial Credit Company, under the terms of which the Commercial Credit Company agreed to furnish a standard finance plan for the purchase and sale at both wholesale and retail of Chrysler cars in every part of the United States in which Chrysler had an outlet; that under the aforesaid contracts the Chrysler Corporation agreed to subsidize Commercial Credit Company for assisting in accomplishing the results set out above; that under the terms of such contracts the Commercial Credit Company agreed that it would not represent to Chrysler dealers and others that it was authorized to act as representative and associate of defendant Chrysler Corporation; that during the period when the aforesaid contracts were in effect Chrysler Corporation paid to Commercial Credit Company as subsidies under said contracts the sum of approximately $2,600,000; that in 1928, and again in 1934, the aforesaid contracts were modified and super-
[fol. 5] seded by other contracts; that under the terms of the 1928 contract the Commercial Credit Company agreed to pay the Chrysler Corporation $1 per car for every Chrysler car financed by Commercial Credit Company; that under the terms of the 1934 contract the Commercial Credit Company agreed and promised to pay to Chrysler Corporation 10% of its gross annual net income from all sources (only 60% of the gross income of Commercial Credit Company arises from the financing of automobiles); that under the terms of the said 1934 contract and by virtue thereof and as consideration therefor, Commercial Credit Company transferred to Chrysler Corporation 50,000 shares of its capital stock; that under the terms of both the 1928 and 1934 contracts Commercial Credit Company was permitted to advertise, announce, and represent to Chrysler dealers that it was authorized to handle all matters pertaining to the financing of cars manufactured by any of the Chrysler Group, and the Chrysler Group agreed and promised that they would use all means necessary to compel dealers who sold cars manufactured by any of the Chrysler Group to finance exclusively through the facilities of the Commercial Credit Company; that as part of the consideration for the aforesaid promises and for entering

the aforesaid contracts of 1928 and 1934, the Commercial Credit Company has paid to Chrysler Corporation the sum of approximately $2,500,000;

That defendants and each of them have been and are violating the provisions of Section I of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies", 26 Stat. 209, commonly known as the Sherman Antitrust Act;

That under Section 4 of the above-named Act the District courts of the United States are invested with jurisdiction [fol. 6] to prevent and restrain violations of the Act;

That under Section 4 of the Act it is the duty of the several District Attorneys of the United States in their respective districts, under the supervision of the Attorney General, to institute proceedings in equity to prevent and restrain violations, and that such proceedings may be instituted by way of a complaint setting forth the case and praying that such violation shall be enjoined or otherwise prohibited;

The defendants and each of them for a period of three years immediately preceding the filing of this complaint, and for many years prior thereto, have been and are guilty of violation of Section I of the Sherman Act in all parts of the United States, as well as in the Northern District of Indiana, South Bend Division, by combining and conspiring together to restrain and control the trade and commerce in Chrysler automobiles and the wholesale and retail sale and financing of Chrysler automobiles among the several states, and will continue such violations unless enjoined;

That defendants and each of them are within the jurisdiction of this Court for purposes of service.

II

Complainant alleges and complains further that the Chrysler Group (hereinafter called Chrysler), the General Motors Corporation (hereinafter called General Motors), and the Ford Motor Company (hereinafter called Ford) are the principal manufacturers of motor cars in the United States and are competitors with each other; that for many years past, and particularly during the three-year period [fol. 7] immediately preceding the filing of this complaint, Chrysler, General Motors and Ford have manufactuerd,

sold and delivered at wholesale approximately 90% of the automobiles manufactured in the United States, of which respondent, Chrysler, has manufactured and sold approximately 25%; that the remaining 10% have been manufactured, sold and delivered by some 12 to 15 other manufacturers;

That during the period from January 1, 1934, to the date of the filing of this complaint, approximately 16,000,000 automobiles have been manufactured, sold and delivered at wholesale and retail in the United States; that of these General Motors has produced approximately 7,000,000, Chrysler approximately 4,000,000, Ford approximately 4,000,000, and the 12 or 15 other manufacturers, approximately 1,000,000;

That the automobiles of Chrysler are and have been at all material times manufactured at plants located in the States of Michigan, Indiana and California; those of Ford, at plants located in the States of Michigan, Minnesota, Illinois, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, Virginia, Kentucky, Missouri, Georgia, Texas and California; those of the General Motors Corporation, at plants located in the States of Michigan, Wisconsin, Missouri, Georgia, New York, New Jersey and California;

That these automobiles are and at all material times have been manufactured, transported, sold, financed, and delivered in interstate commerce, each of the above steps being necessary and integral parts of a continuous flow of commerce in getting automobiles from the manufacturers to retail purchasers in the several states, including retail purchasers located in the Northern District of Indiana, South [fol. 8] Bend Division, and that the evils complained of herein are incident to, a part of, and directly affect commerce among the several states and the flow thereof;

That the sale of motor-cars manufactured by Chrysler, General Motors and Ford to the public is and at all material times has been made through some 40,000 persons, companies and corporations known as automobile dealers, of whom approximately 10,000 are Chrysler dealers, located throughout the several states, who are engaged in the business of buying and selling automobiles; that dealers purchase new automobiles from the manufacturers and their associates pursuant to contracts which are subject to cancellation at the will of either party; that cars, including Chrysler cars, when purchased by dealers, have been and

will continue to be transported from the above-named places of manufacture to dealers located in the several states, including many dealers located in the Northern District of Indiana, South Bend Division;

That during the three-year period immediately preceding the filing of this complaint, as well as during many years prior thereto, Chrysler, General Motors and Ford have required and will continue to require payment in cash at the factory for all cars sold by them, prior to transportation and delivery thereof in interstate commerce from the factory to dealers located in the several states, as well as many dealers located in the Northern District of Indiana, South Bend Division;

That during the past three years approximately $12,500,000,000 has been paid to automobile manufacturers for new cars shipped to dealers, of which approximately $6,500,000,000 has been paid for cars manufactured by General Motors, $2,500,000,000 for cars manufactured by Chrysler, and $2,500,000,000 for cars manufactured by Ford, and ap- [fol. 9] proximately $1,000,000,000 for cars manufactured by the remaining 12 to 15 automobile manufacturers;

That because of the high unit prices of automobiles demanded by General Motors, Ford, and respondent Chrysler, and because said manufacturers have required payment for cars in cash before shipment and delivery to dealers, it has been necessary for the great majority of dealers to secure money in large quantities from sources other than their own; that in order to supply these necessary funds many automobile finance companies have been organized and have been regularly and continuously engaged in the business of lending funds to such dealers for the purchase of cars from the manufacturers, which loans are secured by the cars so purchased; that there are three major groups of finance companies (hereinafter referred to as the "affiliated finance companies") engaged in the business of supplying funds to dealers for the purchase of automobiles, and that each of said groups of companies is affiliated with one of the major manufacturers pursuant to stock ownership, contract or working agreement; that respondent, Commercial Credit Company, is affiliated with Chrysler through contractual agreement and partial stock ownership; that Commercial Investment Trust Corporation, Commercial Investment Trust, Incorporated, Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit

Company of Indiana, and Universal Credit Company, Inc. are affiliated with Ford, originally by stock ownership and currently by working agreement; the General Motors Acceptance Corporation and its subsidiary companies with General Motors through 100% stock ownership of the former by the latter; that the affiliated finance companies have furnished the major portion of the funds required by dealers of the three above-named manufacturers in financ- [fol. 10] ing their purchases of new cars; that in addition to the affiliated finance companies there are approximately 375 finance companies, as well as banks and other lending institutions, which have no relation to the three major manufacturers either by stock ownership, contract or working agreement (arbitrarily referred to herein as "independent finance companies") which are located in all states in the United States and are there engaged, either in whole or in part, in financing the sale of automobiles by manufacturers to dealers; that during the three-year period immediately preceding the filing of this complaint the affiliated and independent finance companies have supplied to dealers of the three above-named automobile manufacturers for purposes of financing such dealers' purchase of new cars approximately $5,500,000,000, of which the affiliated finance companies have supplied approximately $4,500,000,000 and the independent finance companies have supplied approximately $1,000,000,000; that during the same three-year period the Commercial Credit Company and its affiliates have financed approximately 67% of the Chrysler cars supplied to Chrysler dealers and independent finance companies have financed the remaining 33%;

That approximately 60% of the new cars manufactured by the three above-named manufacturers at all material times have been sold at retail by dealers upon the so-called installment plan which requires the purchaser to pay a part of the purchase price at the time of the sale, either in cash or in a used car, or both, with the remainder to be paid in installments; that since dealers have been unable generally to finance such sales on credit with their own funds, the affiliated and independent finance companies have advanced [fol. 11] funds to individual purchasers of new cars who purchase them on the installment plan; that the funds so advanced are secured by the installment note of the purchaser, indorsed by the dealer with or without recourse, as the case may be, and secured by the pledge of the automobile so pur-

chased; that during the three years immediately preceding the filing of this complaint approximately 6,500,000 new cars have been sold on the installment plan; that affiliated and independent finance companies have furnished approximately $6,000,000,000 to purchasers, $5,000,000,000 of which has been supplied by the affiliated finance companies and $1,000,000,000 by the independent finance companies; that during said period Commercial Credit Company and its affiliates have supplied approximately 65% of the funds required to finance the retail time sales of Chrysler dealers.

III

Complainant alleges and complains further that each of the three major automobile manufacturers, General Motors, Ford, and respondent, Chrysler, together with their respective affiliated finance companies, General Motors Acceptance Corporation, Universal Credit Corporation and its affiliates, and respondent, Commercial Credit Company and its affiliates, respectively, have at all material times conspired separately to impede unreasonably the free flow of commerce in automobiles and in the financing thereof in the several states, as well as in the Northern District of Indiana, South Bend Division, by excluding or attempting to exclude all other finance companies from financing the wholesale sale of new cars to dealers and the retail sale of used cars by dealers; that respondent, Chrysler Corporation, and respondent, Commercial Credit Company (includ-[fol. 12] ing all respondent finance companies) have employed, among others, the following means and have done the following overt acts for the purpose of effecting the conspiracies herein alleged, to wit:

1. That Chrysler dealers, numbering approximately 10,000, during the three-year period immediately preceding the filing of this complaint, have been coerced, intimidated and discriminated against by the said respondent Chrysler for the purpose and with the effect of forcing them to use the services and facilities of respondent finance companies herein, in financing both wholesale and retail purchases of Chrysler motor-cars;

2. That Chrysler dealers have been required by Chrysler to promise to use the facilities of respondent finance companies under threats of cancellation of their dealer contracts with Chrysler;

3. That dealers refusing to make their purchases and sales of Chrysler cars through respondent finance companies, in many instances, have had their dealer contracts cancelled by Chrysler without notice and without statement of cause;

4. That Chrysler has refused to deliver cars to dealers refusing the use of such services;

5. That Chrysler has delivered to dealers who failed to finance through respondent finance companies cars on occasions when none were ordered;

6. That Chrysler has delayed unduly shipments of cars ordered by dealers who refused to use the facilities of respondent finance companies;

7. That Chrysler has shipped to dealers who refused to use the facilities of respondent finance companies cars of [fol. 13] different color, design, model, style and number than those ordered, and have favored those dealers availing themselves of the services of respondent finance companies with respect to services, facilities, privileges and conveniences in the delivery of cars;

8. That Chrysler dealers are and have been at all material times required by respondent, Chrysler, to permit respondent finance companies to inspect their books, records and accounts for the purpose of determining the amount of financing done by the dealers with respondent finance companies, as well as with the independents, and that such privileges have been and are denied independent finance companies;

9. That Chrysler dealers have been and are required by respondent, Chrysler, to disclose the amount of finance business done with independent finance companies;

10. That respondent, Chrysler, by various means, divulges to respondent finance companies or permits them to secure from the agents, servants and employees of Chrysler dealers information relative to the finance business done by such dealers with independent finance companies, which privileges are denied the independent finance companies;

11. That Chrysler furnishes respondent finance companies with office space in its factories enabling the latter to determine the number of cars ordered by individual

dealers and other information relating to their business, and convenient facilities for carrying on their finance business, which privilege is denied the independent finance companies;

12. That respondent, Chrysler, permits representatives of respondent finance companies to attend Chrysler dis- [fol. 14] trict, divisional and national sales meetings with Chrysler dealers for the purpose of urging such dealers to patronize respondent finance companies, which privileges are denied the independent finance companies;

13. That respondent, Chrysler, furnishes respondent finance companies with all contracts with dealers and other instruments deemed necessary to security in delivering cars to dealers, which privileges are denied the independent finance companies;

14. That respondent, Chrysler, advertises, indorses and recommends the financing services of respondent finance companies;

15. That respondent, Chrysler, furnishes respondent finance companies with information relating to the purchase, sale, transportation and delivery of cars to Chrysler dealers, including a description and identification of cars, and refuses the same to independent finance companies;

16. That Chrysler passes title to Chrysler cars financed through the facilities of the respondent finance companies to those finance companies before the car is shipped to the dealer, the latter securing only possession and custody, and accepts payment from respondent finance companies for such cars, while it refuses to accept payment for cars from independent finance companies or to pass title to them but will accept payment for cars financed by independent finance companies only from the dealer and will deliver title only to the dealer;

17. That dealers financing retail time sales through respondent finance companies are required by the latter to indorse the notes of the retail purchaser with recourse and [fol. 15] thus to assume a secondary liability for their payment;

18. That respondent finance companies require dealers to include in the charge made by them to retail purchasers

for financing the sale of Chrysler automobiles on the installment plan a so-called dealers' reserve in an amount fixed and prescribed by them, which is in addition to interest, insurance and all other charges made by the dealer; that the alleged purpose of such reserve is to compensate the dealer for losses sustained by him in case of default by the purchaser in the payment of the full purchase price of the automobile purchased by him; that such reserves, when paid by the purchaser to the respondent finance company, are retained by it until the purchaser's obligation has been paid in full, at which time it is either paid over to the dealer or retained further as security for the payment of other obligations of the dealer to respondent finance companies; that such dealers' reserve is not fixed by respondent finance companies on an actuarial basis and is and has been far in excess of actual losses sustained by dealers; that purchasers of automobiles from Chrysler dealers are not advised that any dealers' reserve is included in the charge made for such purchase; that this reserve is in the nature of a rebate to dealers to induce them to use the services of respondent finance companies and increases unduly the time sales purchase price to the automobile purchaser; that during the period from 1925 to and including the date of the filing of this complaint, respondent finance companies have paid to dealers as such reserves sums totalling more than $5,000,- [fol. 16] 000; that respondent finance companies now have in their possession large sums of money, to wit, many millions of dollars in the form of dealer reserves collected from purchasers without their knowledge and not yet rebated to dealers;

19. That respondents have discriminated against independent finance companies with respect to the manner, form and time of payment for time sales paper purchased by them;

20. That for the purpose of inducing Chrysler dealers to make use of their services, respondent finance companies have represented to such dealers that Chrysler would discriminate against them in the time and manner of delivery of automobiles to them and otherwise unless such dealers made use of the services of respondent finance companies; that agents of Chrysler and respondent finance companies, by prearrangement, have jointly visited dealers with the purpose and effect, by threats, persuasion and intimidation,

of inducing such dealers to make use of the services of respondent finance companies;

21. That, unless enjoined, Chrysler will hereafter, in pursuance of the conspiracy herein alleged, discriminate against independent finance companies and in favor of respondent finance companies by the acquisition of stock or other interest in respondent finance companies or by making loans or gifts to respondent finance companies and denying same to independent finance companies;

22. That at all times material and within the three years immediately preceding the filing of this complaint, as well as for many years prior thereto, respondents and all of them have regularly and continuously carried out, performed, engaged in and committed all of the acts, practices, [fol. 17] arrangements, agreements, discriminations, threats and wrongs described hereinabove in all states of the United States, as well as in the Northern District of Indiana, South Bend Division, and unless enjoined will continue so to do.

IV

Complainant alleges and complains further that the purpose and effect of the aforementioned practices of respondents have been to procure, restrain and keep within their control to the greatest extent possible and to the exclusion of all other persons, companies and corporations, the business of financing the trade and commerce of new Chrysler automobiles among the several states and in used automobiles of any make and model handled by Chrysler dealers; that substantial investments, credit and property of many Chrysler dealers have been either destroyed, reduced in value or jeopardized by the practices described hereinabove; that the retail price of automobiles to the public has been increased unreasonably by such practices; that such practices have jeopardized and destroyed the business of independents; that such practices have been pursued by respondents continuously for the three-year period immediately preceding the filing of this complaint, as well as for many years prior thereto; that such acts and practices are continuous and will continue in the future unless restrained, enjoined and prohibited by this Court.

Wherefore, complainant prays that respondent, Chrysler Corporation, and its officers, directors, agents and serv-

ants be restrained, enjoined and prohibited from doing or causing to be done any of the following:

1. From coercing its dealers in the manner described in particular hereinabove, or in any way, to use the financing [fol. 18] facilities of respondent finance companies;

2. From discriminating in ways more particularly set out hereinabove, or in any way, against Chrysler dealers who do business with independent finance companies;

3. From discriminating against independent finance companies in the financing by Chrysler dealers of both wholesale and retail purchases of Chrysler cars, and used cars taken by dealers on trade in the sale of new cars;

4. From requiring any dealer by threats, intimidation, contractual arrangement or otherwise, to use a particular plan or rate of financing;

5. From cancelling or threatening to cancel any contract, franchise or agreement with any dealer because of failure of such dealer to patronize respondent finance companies;

6. From agreeing with any finance company that an agent of the finance company and the manufacturer will be present for the purpose of influencing the dealer to patronize any particular finance company;

7. From recommending or advertising any particular finance company to any dealer or to the public;

8. From acquiring in any way an interest in any finance company or by gift, loan or otherwise rendering financial assistance to any finance company.

Complainant prays further:

1. That respondent, Chrysler Corporation, its officers, directors, agents and servants, be required to make available to independent finance companies privileges, services and facilities substantially similar to those made available to respondent finance companies, without discrimination, including space in the factory, information relating to identity of dealers and amount of business done with competi- [fol. 19] tors, attendance at district, division, factory and national sales meetings, provided such privileges are accorded respondent finance companies;

2. That respondent, Chrysler Corporation, its officers, directors, agents and servants, be required to assign title or lien to all cars sold to dealers to any and all finance companies on similar terms.

Complainant prays further that respondent finance companies and each of them, their officers, directors, agents and servants, be restrained, enjoined and prohibited from doing or causing to be done any of the following:

1. From representing to any dealer that the manufacturer requires him to patronize any particular finance company;

2. From representing to any dealer that his franchise will be cancelled for failure to patronize respondent finance companies;

3. From requiring dealers to include in their retail time sales price of automobiles any sum in the form of a dealers' reserve, rebate, pack or otherwise.

Complainant prays further that discriminations of all types as between affiliated finance companies and independents be prohibited; that all automobile finance companies be treated alike or in such manner as the Court may deem necessary and proper to maintain the good-will of the manufacturer.

Complainant prays further that respondents, Chrysler Corporation and Commercial Credit Company, be required to cancel the contract existing between them under the terms of which Commercial Credit Company pays annually to Chrysler Corporation 10% of its net gross revenues [fols. 20-21] from all sources.

Complainant prays further that this Court retain continuing jurisdiction of this cause for purposes of carrying out the matters herein prayed for, and for such further order or orders and for such other and further relief as the Court may deem necessary, equitable, just and proper in the premises.

James R. Fleming, United States Attorney for the Northern District of Indiana.

Homer Cummings, Attorney General of the United States. Thurman Arnold, Assistant Attorney General of

the United States. John J. Abt, Holmes Baldridge, Special Assistants to the Attorney General of the United States.

[fol. 22] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF DEFENDANTS, CHRYSLER CORPORATION, DESOTO MOTOR CORPORATION, PLYMOUTH MOTOR CORPORATION, DODGE BROTHERS CORPORATION AND CHRYSLER SALES CORPORATION—Filed November 7, 1938

To the Honorable the Judge of the District Court of the United States for the Northern District of Indiana, Sitting in Equity:

Now come the defendants Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation (referred to in the complaint as Plymouth Corporation), Dodge Brothers Corporation and Chrysler Sales Corporation, and make answer to the complaint in the above-entitled cause, as follows:

I

They allege that the complaint herein fails to state a cause of action against the defendants, or any of them, upon which relief can be granted.

II

Answering the first unnumbered paragraph of the complaint, these answering defendants deny that they or any [fol. 23] of them have, or at any time have had, branch offices or places of business, or are doing business, in the Northern District of Indiana, and deny that they have any knowledge or information thereof sufficient to form a belief as to the incorporation of the defendants herein other than these answering defendants, as to where said other defendants are authorized to do business, or as to where they have or have had branch offices or places of business, or as to where they are doing business.

III

Answering that article of the complaint marked and numbered "I", these answering defendants deny each and

every allegation therein set forth except as hereinafter expressly admitted or qualifiedly denied:

They admit that defendant Chrysler Corporation is engaged in the manufacture and sale of Chrysler, Dodge, DeSoto and Plymouth automobiles; that defendants Dodge Brothers Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation and Chrysler Sales Corporation are subsidiaries of defendant Chrysler Corporation; that the defendants herein other than these answering defendants are engaged in the business of financing the purchase and sale of automobiles, including Chrysler automobiles, and that on or about the 11th day of June, 1925, Chrysler Sales Corporation made and entered into a certain agreement with Commercial Credit Company and certain of its [fol. 24] subsidiaries, and these answering defendants beg leave to refer to said contract for the exact and complete purposes, terms, and conditions thereof. They admit that on or about the 22nd day of May, 1926, Chrysler Sales Corporation made and entered into a certain contract with Commercial Credit Company, and these answering defendants beg leave to refer to said contract for the exact and complete terms and conditions thereof. They admit that during the period when said contracts were in effect these answering defendants or some of them from time to time paid to Commercial Credit Company, pursuant to said contracts, sums of money aggregating approximately the amount set forth in the complaint herein. They admit that on or about the 22nd day of November, 1928, these answering defendants, except Chrysler Corporation, made and entered into a certain contract in writing with Commercial Credit Company and that on or about the 10th day of December, 1934, Chrysler Corporation made and entered into a certain contract in writing with Commercial Credit Company, and these answering defendants beg leave to refer to said contracts for the exact and complete terms and conditions thereof. They admit that said contract dated November 22, 1928, provided, among other things, that Commercial Credit Company's representatives should not make any statements to distributors or dealers to the effect that Commercial Credit Company's plan of financing was required to be used to the exclusion of any other equally favorable finance plan, and that these answering defendants who were parties thereto agreed to discourage the use by distributors and dealers of financing plans provided by

other finance companies on a basis less favorable to time [fol. 25] payment purchasers of automobiles than those provided by Commercial Credit Company and its affiliated companies; that under the terms of said contract dated December 10, 1934, the defendant Chrysler Corporation agreed, among other things, by proper means, to encourage, recommend, and endeavor to bring about the use by its dealers of the financing plans and facilities of Commercial Credit Company, but these answering defendants deny that they, or any of them, under the terms of said contracts, or any of them, or otherwise, agreed or promised to use all means necessary, or otherwise, to compel dealers to finance purchases and sales of automobiles exclusively through the facilities of Commercial Credit Company or any other finance company. They admit that Commercial Credit Company from time to time paid to Chrysler Corporation, pursuant to the terms of said contracts dated November 22, 1928 and December 10, 1934, sums of money in excess of the amount set forth in the complaint herein, and they admit that Commercial Credit Company sold to Chrysler Corporation, for cash, 50,000 shares of the capital stock of Commercial Credit Company.

With respect to the allegations set forth in the last five paragraphs of said Article I of the complaint herein, the answering defendants deny the same, except that they admit that under Section 4 of the Act therein referred to the district courts are invested with jurisdiction to prevent and restrain violations of said Act and that it is the duty of the several district attorneys of the United States in their respective districts, under the supervision of the Attorney General, to institute proceedings as therein set forth.

[fol. 26] These answering defendants deny that they have knowledge or information sufficient to form a belief as to whether or not the defendant Commercial Credit Company of Delaware is both a holding company and an operating company and owns 100% of the capital stock of all of the other defendant finance companies and controls such companies.

IV

Except as hereinafter specifically admitted or denied, these answering defendants are without knowledge or information sufficient to form a belief as to each and every

allegation set forth in that article of the complaint marked and numbered "II", and therefore deny the same.

They admit that Chrysler Corporation, General Motors Corporation, and Ford Motor Company are the principal manufacturers of motor cars in the United States and are competitors with each other, and that Chrysler Corporation manufactured, sold, and delivered at wholesale in the United States approximately 2,450,000 automobiles during the three years next preceding the filing of the complaint herein.

They admit that during the period from January 1, 1934, to the filing of the complaint herein Chrysler Corporation and its subsidiaries have manufactured, sold and delivered approximately 3,700,000 automobiles at wholesale in the United States.

They admit that said automobiles are and have been manufactured at plants located in the States of Michigan, Indiana, and California.

They admit that certain of said automobiles have been [fol. 27] transported in interstate commerce, but deny that said automobiles have been manufactured, sold, financed, or delivered in interstate commerce, and deny that each of the acts mentioned in the complaint is a necessary or integral part of a continuous flow of commerce in getting automobiles from Chrysler Corporation to retail purchasers in the several states and in the Northern District of Indiana, and deny that the acts, practices, and things complained of in the complaint are incident to, a part of, or directly affect, commerce among the several states and the flow thereof.

They admit that the sale of automobiles manufactured by Chrysler Corporation and its subsidiaries to the public is and at all material times has been made through persons, companies, and corporation- known as automobile dealers, of whom they are now approximately 10,000 located throughout the several states, who are engaged in buying and selling automobiles, of whom approximately 2,500 are direct dealers and of whom approximately 7,500 are sub-dealers under said direct dealers. They admit that said direct dealers purchase new automobiles from Chrysler Corporation pursuant to contracts, which, subject to certain conditions and limitations, are cancellable by either party thereto, and that automobiles manufactured by Chrysler Corporation have been and will continue to be transported from the above-named places of manufacture to dealers located in the sev-

eral states, including dealers located in the Northern District of Indiana, South Bend Division.

They admit that during the three year period immediately [fol. 28] preceding the filing of the complaint herein, the terms of sale of automobiles by Chrysler Corporation to dealers located in the several states, including dealers in the Northern District of Indiana, South Bend Division, have, in most instances, called for payment therefor in cash or its equivalent, either at the factories or at points to which such automobiles are shipped.

They admit that during the past three years approximately $1,600,000,000 has been paid to Chrysler Corporation for new automobiles manufactured by it, of which approximately $1,300,000,000 has been paid to it for automobiles manufactured in the United States.

They admit that many dealers in automobiles manufactured by Chrysler Corporation have secured money in large quantities from sources other than their own, but deny that this was because of the high unit prices of automobiles demanded by these answering defendants, or any of them, or because these answering defendants, or any of them, required payment for cars in cash before shipment and delivery to dealers. They admit that many automobile finance companies have been organized and have regularly and continuously engaged in the business of lending funds to, or advancing moneys for the account of, automobile dealers for the purchase of automobiles from these answering defendants, and that said loans and advances are, in some instances, secured by liens on or title to the automobiles so purchased. They deny that any finance company or group of finance companies is now affiliated with these answering defendants, or any of them, pursuant to stock ownership, contract, working agreement or otherwise, or that respond- [fol. 29] ent Commercial Credit Company is affiliated with these answering defendants, or any of them, through contractual agreement or partial stock ownership, or otherwise, and they allege that in or about the month of January, 1938, all contracts and agreements referred to in the complaint and then in existence between Commercial Credit Company and any of these answering defendants were in all respects terminated, and since in or about the month of February, 1938, these answering defendants have not had, and they do not now have, any interest in any stock of Commercial

Credit Company. They deny, upon information and belief, that Commercial Credit Company has furnished the major portion of the funds required by dealers in automobiles manufactured by Chrysler Corporation in financing their purchases of new cars. They admit that there are finance companies, banks and other lending institutions which have no relation to these answering defendants either by stock ownership, contract, or working agreement, which are located in the United States and are there engaged, either in whole or in part, in financing the sale of automobiles by manufacturers to dealers. They deny that Commercial Credit Company and its affiliates have supplied approximately 65% of the funds required to finance the retail time sales of new automobiles manufactured by Chrysler Corporation and sold on the installment plan.

V

They deny each and every allegation contained in that Article of the complaint herein marked and numbered "III" in so far as the same pertains to the defendants herein, and deny that they have any knowledge or information thereof [fol. 30] sufficient to form a belief as to the allegations contained in said Article in so far as the same pertain to any other person, firm, or corporation, and without limiting the generality of the foregoing, these answering defendants specifically deny that they conspired with anybody for any purpose and specifically deny that they have employed any of the means or done any of the overt acts alleged in paragraphs numbered 1 to 20, inclusive, of said Article III, or have employed any other means or done any other overt acts, for the purpose of effecting the conspiracies alleged in the complaint herein, or any other conspiracy or conspiracies, and further these answering defendants deny that they have carried out, performed, engaged in, or committed any of the acts, practices, arrangements, agreements, discriminations, threats, and wrongs described in said Article III in any of the states of the United States, or in the Northern District of Indiana, or that they will do so, or that they have discriminated or will discriminate against any finance companies and in favor of respondent finance companies, as, or for the purposes, alleged in paragraphs 21 and 22 of said Article III of the complaint, or otherwise.

VI

These answering defendants deny each and every allegation contained in that article of the complaint marked and numbered "IV".

VII

Further answering the complaint herein these answering defendants allege:

[fol. 31] 1. No provision of the contracts mentioned in Article III of the complaint obligated these answering defendants to require dealers to do business with respondent finance companies but on the contrary these answering defendants never promised or agreed to require any of their dealers, or to inform any dealer that he was required, to do business with the respondent finance companies. Said contracts and agreements were entered into by such of these answering defendants as were parties thereto in good faith and for the sole and exclusive purpose of making available to Chrysler dealers and their customers fair and uniform retail time sales plans and practices comparable to the plans and practices available to competing dealers and their customers, and for the purpose of eliminating abuses then prevalent in the business of financing installment sales and thus encouraging the purchase of said defendants' products and insuring to retail purchasers thereof a low cost of purchasing automobiles on installment payment plans.

2. At all the times mentioned in the complaint these answering defendants have repeatedly instructed their representatives not to require or compel any dealer to use the services and facilities of the respondent finance companies and in truth and fact have repeatedly and expressly forbidden their said representatives to require any dealer to do business with the respondent finance companies and forbidden any representative to discriminate against any dealer for doing business with other finance companies or to discriminate against other finance companies.

[fol. 32] 3. These answering defendants are informed after a thorough investigation of the facts and therefore allege that in each year since January 1, 1934, only ten percent (10%) of their dealers have sold all of their retail time sales paper exclusively to respondent finance companies;

twenty-five percent (25%) of their dealers have sold part of their retail time sales paper to the respondent finance companies and part of it to other finance companies; and sixty-five percent (65%) of their dealers have sold no retail time sales paper at all to respondent finance companies.

4. At all the times mentioned in the complaint these answering defendants have made, or approved and renewed or approved the renewal of, contracts with a large majority of their dealers with knowledge that such dealers were doing business with finance companies other than respondent finance companies, and these answering defendants intend to, and will, make, approve, renew, and approve the renewal of, contracts with such dealers, and these answering defendants are informed after a thorough investigation of the facts, and verily believe and therefore allege, that in no instance has a dealer's contract with these answering defendants, or any of them, been cancelled or terminated because such dealer did business with finance companies other than the respondent finance companies.

5. These answering defendants have repeatedly informed their dealers and also finance companies, orally and in writing, publicly and in individual instances, that no such dealer is or has ever been required or compelled to do business [fol. 33] with the respondent finance companies, or any of them, and that fact is and long has been well known to and understood by said dealers, and to finance companies generally.

6. There have long been practices by many finance companies in collaboration with automobile dealers of obtaining by various devices from retail purchasers of automobiles on the installment plan unduly high finance charges. Other manufacturers of automobiles, competitors of these answering defendants, had provided facilities by which purchasers at retail of their automobiles might buy them on the installment plan without paying more than fair and reasonable finance charges. These answering defendants entered into the contracts with the respondent finance companies in good faith and in order that the retail purchasers on the installment plan of automobiles made by Chrysler Corporation might also have available to them fair and reasonable finance charges, and in order that Chrysler Cor-

poration might compete on an equal basis with its competitors in selling automobiles.

7. Under the agreements between these answering defendants and Commercial Credit Company, and in order to meet competition of other automobile manufacturers, time payment charges available to installment buyers of Chrysler Corporation products have been greatly reduced, to the great benefit of the time-buying public. Many finance companies have not reduced their rates to meet these reductions; others have collaborated with automobile dealers to obtain additional sums for themselves and the dealers in the guise [fol. 34] of finance charges, all to the detriment of time payment purchasers of automobiles.

8. These answering defendants have not at any time interfered or exerted influence in any negotiations or arrangements between their dealers and the respondent finance companies concerning agreements of the respondent finance companies to pay reserves to Chrysler dealers or the reserves that the finance companies paid to the dealers or held for the account of said dealers, but in every instance the finance companies negotiated and agreed with the dealers without interference or influence on the part of these answering defendants.

9. By providing fair and reasonable time payment plans and facilities to Chrysler dealers and their customers as aforesaid, and by encouraging the use by Chrysler dealers of time payment plans, which did not require installment buyers of Chrysler products to pay higher finance charges, these answering defendants have been able to compete with other leading manufacturers of automobiles. By this competition they have intended to enable, and have enabled, time payment buyers of Chrysler products to save many millions of dollars which otherwise they would have had to pay as finance charges, and by means of their having thus benefited retail purchasers of automobiles on the installment plan in financing purchases and sales of automobiles, these answering defendants have greatly extended the market for their products, and the employment of workers in their plants, and have enabled many thousands of persons to buy their products who otherwise would have been unable to [fols. 35-36] do so.

Wherefore, these answering defendants respectfully pray that the complaint herein be dismissed.

Will G. Crabill, Office and P. O. Address: J. M. S. Building, South Bend, Indiana; Larkin, Rathbone & Perry, by Nicholas Kelley, Office and P. O. Address: 70 Broadway, New York, N. Y., Attorneys for Defendants Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation, Chrysler Sales Corporation and Dodge Brothers Corporation.

Acknowledged service Nov. 7, 1938.

Holmes Baldridge.

[fol. 37] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF DEFENDANTS, COMMERCIAL CREDIT CO., ET AL.—Filed November 7, 1938

Defendants, Commercial Credit Company, a Delaware corporation, Commercial Credit Company, a Pennsylvania corporation, Commercial Credit Company, an Iowa corporation, Commercial Credit Company, a Michigan corporation, Commercial Credit Company, a Minnesota corporation, Commercial Credit Company, a Missouri corporation, Commercial Credit Company, an Illinois corporation, Commercial Credit Company, Inc., a Wisconsin corporation, Commercial Credit Corporation, a New Jersey corporation, and Commercial Credit Company, Inc., an Indiana corporation, sued herein as Commercial Credit Company, hereinafter referred to as Defendant Finance Companies, for their answer to the complaint herein.

First: Allege that the matters set forth in the complaint herein are not sufficient in law to state a cause of action against the defendants or any of them.

Second: Answering the allegations of the unnumbered first paragraph of the complaint, admit that the defendants herein referred to as "Defendant Finance Companies" are organized and are duly authorized to do business under the laws of the respective states in which they are incorpo-[fol. 38] rated as hereinabove set forth; that Commercial

Credit Company, Inc., an Indiana corporation, has offices and is doing business in the Northern District of Indiana, South Bend Division. Deny any information sufficient to form a belief as to the location of the branch offices and places of business of defendants referred to in the complaint as the "Chrysler Group", and as to the places in which said defendants are doing business and as to whether such places include the State of Indiana, Northern District, South Bend Division; and except as herein expressly admitted, deny the allegations of the unnumbered first paragraph of the complaint.

Third: Answering the allegations of paragraph mentioned I of the complaint, admit that defendant Chrysler Corporation is engaged in the manufacture and sale of Chrysler, Dodge, De Sota and Plymouth automobiles; that Defendant Finance Companies are engaged in the business of financing the purchase and sale of automobiles including Chrysler automobiles; that defendant, Commercial Credit Company, a Delaware corporation, is both a holding company and an operating company and owns all of the capital stock of all of the other defendants herein referred to as Defendant Finance Companies, and controls such companies; That in the years 1925, 1926, 1928 and 1934 Commercial Credit Company, a Delaware corporation, entered into written contracts, in some cases with Chrysler Corporation and in some cases with other corporations referred to in the complaint herein as the "Chrysler Group", and allege that the terms of said contracts are in some instances not accurately and in other instances not completely stated and therefore ask leave to refer to the originals of said contracts for the exact terms thereof; that Chrysler Corpo- [fol. 39] ration paid to Commercial Credit Company the sum of approximately $2,600,000 pursuant to the contracts entered into in 1925 and 1926; that Commercial Credit Company, a Delaware Corporation paid to Chrysler Corporation pursuant to the contracts entered into in 1928 and 1934 more than the sum of $2,500,000; that by virtue of a contract entered into in 1934, and as part consideration therefor, Commercial Credit Company, sold at the book value thereof, and delivered against a cash payment therefor, to Chrysler Corporation, 50,000 shares of its capital stock; except as herein expressly admitted deny the allegations of paragraph numbered "I" of the complaint.

Fourth: Answering paragraph numbered "II" of the complaint herein, admit that General Motors, Chrysler and Ford are the principal manufacturers of motor cars in the United States and are competitors with each other; that during the period from January 1, 1934 to the date of the filing of the complaint a large number of automobiles have been manufactured, sold and delivered at wholesale and retail in the United States, and that the greater part of said automobiles have been manufactured by General Motors, Chrysler and Ford; That Chrysler, Ford and General Motors have plants in various states as alleged in the complaint; that certain of said automobiles have been transported in interstate commerce; That many dealers secure money from sources other than their own; that many automobile finance companies have been organized and are engaged in the business of lending funds to such dealers for the purchase of cars from the manufacturers, which loans are secured by the cars so purchased; that there are a large number of finance companies as well as banks and other lending institutions which have no relation to the three major manufacturers either by stock ownership, contract or working agreement and which are located in [fol. 40] all of the States of the United States and are there engaged either in whole or in part in financing the sale of automobiles by manufacturers to dealers. Deny any information sufficient to form a belief as to the percentage of automobiles manufactured in the United States by the principal manufacturers of motor cars, as to the percentage that Chrysler has manufactured, or as to the percentage manufactured, sold and delivered by 12 or 15 other manufacturers; as to the number of automobiles manufactured, sold and delivered at wholesale and retail in the United States during the period from January 1, 1934 to the date of the filing of the complaint herein or as to the number produced by General Motors, Chrysler, Ford, or 12 to 15 other manufacturers; as to the number of persons, companies and corporations in the United States known as automobile dealers; as to the number of Chrysler dealers located throughout the several States that are engaged in the business of buying and selling automobiles; as to the terms of contracts of said dealers with the manufacturers or their associates; as to whether General Motors, Chrysler or Ford have required or will require payment in cash at the factory for any cars sold by them prior to the trans-

portation and delivery thereof; as to the amount paid to automobile manufacturers for new cars shipped to dealers or as to the amount paid to General Motors, Chrysler or Ford, or as to the amount paid to 12 to 15 other automobile manufacturers; as to the allegation that Commercial Investment Trust Corporation, Commercial Investment Trust, Incorporated, Universal Credit Corporation, Universal Credit Company of Delaware, Universal Credit Company of Indiana, and Universal Credit Company, Inc. are affiliated with Ford, originally by stock ownership and currently by working agreement; as to the allegation that General Motors Acceptance Corporation and its subsidiary [fol. 41] companies are affiliated with General Motors through 100% stock ownership of the former by the latter; as to the allegation that the finance companies described in the complaint as "affiliated finance companies" have furnished the major portion of the funds required by dealers of General Motors, Ford and Chrysler in financing their purchases of new cars; as to the amounts supplied to dealers of said manufacturers by finance companies described in the complaint as "affiliated finance companies" or the amounts supplied to such dealers by finance companies arbitrarily described in the complaint as "independent finance companies" for the purpose of financing such dealers' purchase of new cars; as to the percentage of new cars manufactured by General Motors, Ford and Chrysler which have been sold at retail by dealers upon the so-called instalment plan; as to the number of new cars sold on the instalment plan; and except as hereinabove expressly admitted, deny each and every allegation of the complaint contained in paragraph numbered "II".

Fifth: Answering the allegations of the paragraph numbered "III" of the complaint, deny that they have any information sufficient to form a belief as to the allegations with respect to General Motors, Ford, General Motors Acceptance Corporation, Universal Credit Corporation and its affiliates, and deny the other allegations of said paragraph.

Sixth: Answering paragraph numbered "IV" of the complaint herein, deny the allegations of said paragraph.

Seventh: Further answering the allegations contained in Paragraph III of the complaint, all of which allegations the Defendant Finance Companies have denied, the Defend-

ant Finance Companies allege that the contractual and [fol. 42] other relations between the Defendant Finance Companies and the Chrysler Group were for the purpose of developing and facilitating the sale of automobiles manufactured by Chrysler by providing the dealers with finance plans at reasonable finance rates for their time sales, and thus competitively to meet the time sales plans of other manufacturers of automobiles; that the Defendant Finance Companies offered various kinds of finance plans to the dealers in order to meet their individual needs; that such plans were of three general classifications. Such general classifications are:

1. Full liability, generally referred to as the With Recourse Plan, under which the dealer transfers the obligations of the time buyer with guarantee of payment;

2. Limited liability, generally referred to as the Repurchase Agreement Plan, under which the dealer repurchases from the Defendant Finance Companies automobiles which were repossessed by the Defendant Finance Companies from purchasers who had defaulted on their obligations, and under which plan the dealer has no liability unless the automobiles are recovered and delivered to the dealer within the time specified in the contract;

3. No liability, generally referred to as the Without Recourse Plan, under which the dealer sells and transfers the retail time sales paper to the Defendant Finance Companies, and has no further obligations or liability in respect thereto.

[fol. 43] The terms on, and periods within which the Defendant Finance Companies pay the dealers for the retail time sales paper vary according to agreements made with the dealers and the requirements of the dealers. The greater part of Defendant Finance Companies' purchases from dealers is under the second of these plans. In general under that plan payment of a part of the purchase price of the retail time sales paper is deferred until such time as are provided in the varying contracts with the dealers, and such part of the purchase price has generally been termed in the trade as the dealer's reserve, because the dealer uses the same for reimbursement for losses sustained by him on his time sales, for expense of reconditioning and reselling repossessed automobiles and similar expenses. Such so-

called dealers' reserves are a part of the difference between the cash delivered price of the automobile and the time price of the automobile, which difference is generally referred to as the finance charge; the retail time sales price of the automobile is determined by the agreement between the dealer and the retail purchaser, to which agreement the Defendant Finance Companies are not parties; after delivery of the retail time sales paper by the retail purchaser to the dealer, the dealer then, as the owner of such retail time sales paper, sells and transfers the same to the Defendant Finance Companies, and the Defendant Finance Companies pay for the same under one of the three plans above referred to. Defendant Finance Companies have done a substantial volume of business throughout the United States, and accordingly have paid substantial sums of money to automobile dealers for retail time sales paper, and are to pay further substantial sums of money on the purchase price of such retail time sales paper, generally referred to as [fols. 44-45] dealers' reserves. Defendants further allege that all of such plans are economically and legally justified.

Wherefore, Defendant Finance Companies pray that the complaint herein be dismissed.

Paul M. Butler, Address: 801-810 Odd Fellows Building, South Bend, Indiana; Duane R. Dills, Address: 100 East 42nd Street, New York, N. Y.; Israel B. Oseas, Address: 55 Liberty Street, New York, N. Y., Attorneys for Defendant Finance Companies Above-Named.

Acknowledged service Mar. 7, 1938. Holmes Baldridge.

[fol. 46] In United States District Court for the Northern District of Indiana

No. 9. Civil

United States of America, Petitioner,
against
Chrysler Corporation, et al., Respondents

Final Decree—November 15, 1938

1. The United States of America filed its petition herein on November 7, 1938; each of the respondents appeared and

filed its answer to such petition, and asserted the truth of its answer and its innocence of any violation of law; the petitioner and the said respondents desire to avoid the expenses of a trial of the issues therein and the loss of time occasioned thereby; no testimony having been taken, each of the respondents consented to the entry of this decree without any findings of fact, upon condition that neither such consent nor this decree shall be considered an admission or adjudication that it has violated any statute; and the United States of America by its counsel having consented to the entry of this decree and to each and every provision thereof, and having moved the court for this injunction,

Therefore, it is ordered, adjudged and decreed as follows:

2. That the court has jurisdiction of all persons and parties hereto; and for the purposes of this decree and proceedings for the enforcement thereof, and for no other purpose, that the court has jurisdiction of the subject matter hereof and the petition states a cause of action against the respondents under the Act of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies".

[fol. 47] 3. "Respondent Finance Company" as used in this decree shall include Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Delaware, Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Pennsylvania, Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Iowa, Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Michigan, Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Minnesota, Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Missouri, Commercial Credit Company, a corporation organized and duly authorized to do business under the laws of the State of Illinois, Commercial Credit Company, Inc., a corporation organized and duly authorized to do business under the laws of the State of Wisconsin, Commercial Credit Corporation, a corporation organized and duly authorized to

do business under the laws of the State of New Jersey, Commercial Credit Company, Inc., a corporation organized and duly authorized to do business under the laws of the State of Indiana and their officers, directors, agents and employees. "Manufacturer" as used in this decree shall include Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation, all of which are organized and duly authorized to do business under the laws of the State of Delaware, Chrysler Sales Corporation and Dodge Brothers Corporation, both of which are organized and duly authorized to do business under the laws of the State of Michigan and their officers, directors, agents and employees.

4. The respondents, their officers, directors, agents and employees, be and they are hereby enjoined from doing the acts hereby prohibited and to do the acts hereby directed.

5. The following terms, as used in this decree, shall have the following meanings:

(a) "Person" shall mean a person, firm, corporation or association.

(b) "Dealer" shall mean a person who holds a franchise from, or approved by, the Manufacturer that provides for [fol. 48] the purchase at wholesale of new automobiles made by the Manufacturer, and who resells the automobiles at retail.

(c) "Wholesale financing" shall mean the advancing by a finance company, as hereinafter defined, of money or credit to or for the account of a dealer to cover, in whole or in part, the cost of new automobiles ordered by the dealer at wholesale.

(d) "Retail financing" shall mean the purchase or other acquisition of retail time sales paper from dealers by finance companies, as hereinafter defined.

(e) "Finance charge" shall mean the difference between the cash delivered price of an automobile and the price of that automobile when sold on an installment payment plan, including or not including (as the plan may provide) insurance for the retail purchaser.

(f) "Finance company" shall mean a person engaged chiefly in wholesale financing or retail financing, or both.

(g) "Retail time sales paper" shall mean any conditional sale contract, chattel mortgage, lease, note or other instrument given to evidence or secure the obligation to pay the whole or any part of the price of automobiles sold by a dealer at retail.

(h) "A finance company" or "any finance company" shall include Respondent Finance Company.

(i) "Registered finance company" shall mean a finance company which shall be registered as provided in subparagraph (j) of paragraph 6 of this decree including Respondent Finance Company if it be a registered finance company.

(j) "Ford Motor Company" means Ford Motor Company, a corporation of the State of Delaware and its subsidiaries and successors, "General Motors Corporation" means General Motors Corporation, a corporation of the State of Delaware and its subsidiaries and successors, and "General Motors Acceptance Corporation" means General Motors Acceptance Corporation, a corporation of the State of New York and General Motors Acceptance Corporation of Indiana, Incorporated, a corporation of the State of Indiana, and their subsidiaries and successors.

[fol. 49] 6. The Manufacturer:

(a) Shall permit any finance company or other person to pay for any automobile shipped or otherwise delivered by the Manufacturer to any dealer, upon written specific or continuing authority of the dealer;

(b) So long as the Manufacturer shall continue to give or assign to Respondent Finance Company or any other finance company, any document of title or lien in respect of such automobiles, it shall not refuse, upon written request of any other finance company, to make available or assign to it similar documents of title or lien in respect of automobiles similarly shipped or delivered to the dealer and paid for by the finance company upon substantially similar terms and conditions;

(c) So long as the Manufacturer shall continue to furnish Respondent Finance Company or any other finance company space for maintaining an office in any place of business of the Manufacturer, it shall not refuse, upon substantially

equivalent terms and conditions and upon written request of any other finance company that extends wholesale financing facilities to dealers operating under franchise of the Manufacturer, to furnish it space for maintaining an office in such place of business; provided that it shall not be a violation of this decree for the Manufacturer to furnish the same only to registered finance companies as defined in sub-paragraph (j) of this paragraph 6;

(d) So long as the Manufacturer shall knowingly continue to furnish to Respondent Finance Company or any other finance company the identity of or other information concerning dealers or prospective dealers, it shall not knowingly refuse to furnish corresponding information, upon substantially similar terms and conditions and upon specific or continuing request as to identity and specific but non-continuing request as to other information, to any other finance company whose territory includes the location of such dealer's or prospective dealer's place of business; provided that it shall not be a violation of this decree for the Manufacturer to furnish the same only to registered finance companies as defined in sub-paragraph (j) of this paragraph 6, or only to a finance company designated in writing [fol. 50] to the Manufacturer by the dealer or prospective dealer;

(e) Except as provided by sub-paragraphs (j) and (k) of this paragraph 6,

(i) the Manufacturer shall not establish any practice, procedure or plan for the retail or wholesale financing of automobiles for the purpose of enabling Respondent Finance Company or any other finance company or companies to enjoy a competitive advantage in obtaining the patronage of dealers through any service, facility or privilege extended by the Manufacturer pursuant to such practice, procedure or plan if such service, facility or privilege or a service, facility or privilege corresponding thereto, is not made available upon its written request to any other finance company upon substantially similar terms and conditions; and

(ii) so long as the Manufacturer shall continue to afford any service, facility or privilege not otherwise specifically referred to in this decree to Respondent Finance Company

or any other finance company or companies, it shall not refuse to afford similar or corresponding services, facilities or privileges upon substantially similar terms and conditions and upon written request to any other finance company for the purpose of giving Respondent Finance Company or any other finance company or companies a competitive advantage in obtaining the patronage of dealers; provided that it shall not be a violation of this decree for the Manufacturer to afford such service, facility or privilege only to registered finance companies as defined in sub-paragraph (j) of this paragraph 6, or only to a finance company designated in writing to the Manufacturer by the dealer or prospective dealer;

the written request shall specify in each instance the particular service, facility or privilege desired;

(f) The Manufacturer shall not give or make available or deny or threaten to deny to any dealer any service or facility, or discriminate among its dealers in any other manner, for the purpose of influencing a dealer to patronize Respondent Finance Company or any other finance company, or registered finance companies;

[fol. 51] (g) The Manufacturer shall not enter into or further continue any contract or agreement with any dealer (1) which provides that the dealer shall patronize only Respondent Finance Company or any other finance company selected by the Manufacturer or registered finance companies; or (2) which requires the dealer to observe any plan for or rate of financing the purchase and sale of automobiles designated by the Manufacturer;

(h) The Manufacturer shall not cancel or terminate any contract, franchise or agreement with any dealer, or threaten to do so, because of failure of such dealer to patronize Respondent Finance Company, or any other finance company, or because of the failure of the dealer to patronize registered finance companies;

(i) The Manufacturer shall not, except in each instance upon written request of the dealer or prospective dealer, arrange or agree with Respondent Finance Company or any other finance company that an agent of the Manufacturer and an agent of the finance company shall together be present with any dealer or prospective dealer for the purpose

of influencing the dealer to patronize Respondent Finance Company or such other finance company; provided, however, that it shall not be a violation of this decree for the Manufacturer to assist any dealer or prospective dealer, because of said dealer's or prospective dealer's financial situation or requirements, by joint conference with him and a representative of a particular finance company, to obtain special facilities or services (such term not including only the financing of the shipment or delivery of automobiles to such dealer or prospective dealer and/or only the purchase or acquisition of retail time sales paper from him in the regular course of business) from the particular finance company and, in part consideration of such special facilities or services, for such dealer or prospective dealer to arrange to do business with such finance company on an exclusive basis for a reasonable period of time as may be agreed between them;

(j) As used in this decree the word "registered" as applied to a finance company means a finance company that shall have done the following things and shall have filed a statement that meets the following requirements:

[fol. 52] 1. The statement shall be signed and acknowledged by the finance company and sworn to by an officer thereof, and shall have been filed in this proceeding and a copy thereof certified by the clerk shall have been served on the Manufacturer.

2. The finance company shall not in any manner have withdrawn the statement or rendered it ineffective.

3. The court shall not have made an order to the effect that the finance company shall cease to be a registered finance company; or, if so, the finance company shall have obtained an order reinstating it as a registered finance company, or otherwise shall have become again a registered finance company.

4. The statement shall be in the following form:

"To Chrysler Corporation (hereinafter called the 'Manufacturer'):

"(A) This statement is made pursuant to sub-paragraph (j) of paragraph 6 of a decree of the United States District Court for the Northern District of Indiana, in a cause en-

titled 'United States of America vs. Chrysler Corporation et al.,' dated November 15, 1938.

"(B) The undersigned finance company, in acquiring retail time sales paper, arising from sales of automobiles, from dealers of the Manufacturer, wherever located, will conform to the following rules:

(1) If the finance company acquires retail time sales paper from a dealer of the Manufacturer on a finance plan which includes insurance to be arranged for by the finance company, the finance company shall (unless the insurance company to which the risk is submitted declines to write the risk) arrange for such insurance as the dealer represents to the finance company is to be arranged for by it and shall mail or cause to be mailed to the buyer a policy or certificate of insurance so arranged for within twenty-five days after the finance company acquires such retail time sales paper. Such policy or certificate shall recite the character of the coverage and the amount of the insurance premium;

[fol. 53] (2) The finance company will not require or accept assignments of wages or salaries, or garnish wages or salaries to collect deficiency judgments in respect of automobiles sold for less than $1,000 and for private and non-commercial use unless, prior to repossession, it has requested the buyer to return the automobile to it and he has not done so;

(3) The finance company will not take any deficiency judgment where the retail purchaser of an automobile, sold for private and non-commercial use, has paid at least 50% of his note or other obligation, and will not collect from any retail purchaser of an automobile, through deficiency or other judgments, any amount in excess of its actual losses and expenses upon the failure of such purchaser to pay his note or other obligation, and will pay to or credit to the account of such purchaser any surplus over the amount owing by him on his note or other obligation which the finance company or its nominee or its affiliated or subsidiary company may realize on the purchaser's note or other obligation and the automobile or any other security therefor;

(4) The finance company will not assign or transfer any retail time sales paper owned or held by it to any other

person, except a dealer from whom the finance company acquired the paper on a full recourse basis rather than upon a non-recourse basis or upon the dealer's agreement to repurchase the automobile if repossessed, without limiting the rights, and creating an obligation in its assignee and his successors in interest, to proceed against the retail buyer only in the manner and to the extent that the finance company is authorized to proceed hereunder;

(5) The finance company will not make a higher charge, for granting an extension or rewriting a transaction, than the approximate pro-rata equivalent of the original finance charge, or charge more than 5 per cent of the delinquent instalments for reinstating a delinquent account or charge more than its out-of-pocket expense plus a reasonable [fol. 54] amount for the time of its employes as collection or repossession expenses;

(6) The finance company will not require the dealer to take a chattel mortgage or other lien on property other than the automobile purchased, as additional security for the payment for such automobile sold for private and non-commercial use; and will not accept an assignment from the dealer of such a chattel mortgage or other lien;

(7) The finance company will not represent to any person that it is, in any way, connected or affiliated with the Manufacturer, or that it has been approved, recommended or endorsed by the Manufacturer, or in any way ascribe to the Manufacturer or its dealers responsibility for, or authorization of, its acts; but this shall not prevent the finance company from stating if that be the case that it is a registered finance company, and at any time when a plan adopted by the Manufacturer is in effect this shall not prevent the finance company from stating if that be the case that it is a registered finance company and is offering financing service in accordance with the plan;

(8) The finance company will not intentionally do anything injurious to the good will of the Manufacturer or to the reputation of its products, or to the goodwill of its dealers except as may result from the assertion of any legal or contractual rights;

(9) The finance company will not without the consent of the Manufacturer disclose to any competitor of the Manu-

facturer information which it shall have received from the Manufacturer;

(10) The finance company will disclose to the purchaser whatever information is required to be disclosed by, and will otherwise comply with, any further order of the court entered pursuant to paragraph 8 of the decree hereinbefore mentioned;

(11) The finance company will not violate any other reasonable rule hereafter from time to time established by the [fol. 55] Manufacturer, approved by the Department of Justice of the United States and incorporated herein by the further order of the United States District Court for the Northern District of Indiana, after notice by registered mail to all registered finance companies and notice in such form as the court may determine to be reasonable to other finance companies and interested parties and an opportunity for hearing to the persons so notified.

"(C) The area within which the finance company conducts its business is: [*insert either 'the United States' or the names of specific states, counties or cities*], and notwithstanding the designation of an area, the finance company nevertheless will comply with clauses (B) and (D) in all areas in which it may now or hereafter do business with dealers of the Manufacturer.

"(D) Until the effective date of any withdrawal of this statement by the finance company in the manner provided by paragraph 1 of sub-paragraph (k), or in the manner provided by paragraph 5 or by paragraph 6, of sub-paragraph (j), of paragraph 6 of said decree, all retail time sales paper, created after the effective date of any plan or plans or modification thereof and covering new automobiles made by the Manufacturer, acquired by the finance company from the Manufacturer's dealers (whether located in the area described in Clause (C) hereof or elsewhere), shall be acquired by it in accordance with the terms of any plan or plans of financing adopted by the Manufacturer as provided by said sub-paragraph (j) and then in effect; provided:

a. The finance charges included in such retail paper may be less than the finance charges specified by such plan or plans or modification thereof, and the other terms of such paper may be more favorable to the retail purchaser than

the terms so specified; and b. the finance company may acquire retail time sales paper covering new automobiles made by the Manufacturer in which the retail purchaser of the automobile is required to pay a finance charge in excess of the finance charge specified in the plan so adopted or modification thereof, but only if the finance company shall [fol. 56] promptly credit such retail purchaser on the time purchase price of the automobile with the amount of the excess. The words 'finance charge' as used in this statement shall mean the difference between the cash delivered price of an automobile and the price of that automobile when sold on an instalment payment plan, including or not including (as the plan may provide) insurance for the retail purchaser.

"(E) This statement is filed on behalf of, and shall bind, the undersigned finance company and all finance companies owned or controlled by the undersigned finance company, and all finance companies which own or control the undersigned finance company or are under common ownership or control with it.

"(F) The address of the finance company's principal office is ——.

—— Finance Company, by ——, President.

Attest:

——, Secretary.

[fol. 57] State of ——,
County of ——, ss:

On this — day of ——, 19—, personally appeared before me, a notary public, —— to me known and known to me to be the person who executed the foregoing statement, and who by me being duly sworn acknowledged and deposed that he is —— President of said Corporation; that he executed the foregoing statement on its behalf; that he executed said statement by authority of the Board of Directors of said corporation and that the seal of said corporation was thereunto affixed by like authority.

——, Notary Public.

State of ——,
County of ——, ss:

——, being duly sworn, deposes and says that he is an officer, to wit the —— of ——, the finance company which

executed the foregoing statement, and that said statement is in all respects true.

——.

Signed and sworn to before me this — day of ——, 19—. ——, Notary Public".

[Appropriate changes to be made for finance companies which are not corporations.]

[fol. 58] 5. Any registered finance company may file with the court a notice in writing of its withdrawal of its sworn statement above mentioned, and serve upon the Manufacturer a copy of said notice, certified by the Clerk of the Court, and ninety days after such service or at such later date as may be stated in the notice, the finance company shall cease to be a registered finance company and the Manufacturer shall notify its dealers that such finance company has ceased to be a registered finance company.

6. The Manufacturer shall notify each finance company, which makes written specific or continuing request therefor, by registered mail of every additional rule which is incorporated in the sworn statement as provided in sub-division (11) of clause (B) of sub-paragraph (j) of this paragraph 6. The notice shall set forth the provisions of the rule and the date, not less than thirty days after the date of mailing the notice, upon which the rule shall go into effect. Any registered finance company so notified may before that date file with the court notice in writing setting forth that it withdraws its sworn statement because it does not intend to be bound by said rule, and serve upon the Manufacturer a copy of said notice certified by the Clerk of the Court, and thereupon the finance company at once and without lapse of any time shall cease to be a registered finance company and the Manufacturer shall notify its dealers that said finance company has ceased to be a registered finance company.

7. The Petitioner, the Manufacturer or any registered finance company shall be entitled to make application to the court, for an order herein finding and adjudging that a registered finance company has failed to comply with its sworn statement, and jurisdiction of this cause is reserved for the entry of orders upon such applications as the facts and justice may require (after such notice and hearing as the court may direct) suspending or revoking the registra-

tion of any registered company or dismissing the application. If the order shall provide that such finance company shall cease to be a registered finance company indefinitely, the finance company may, not less than six months thereafter, apply to the court for an order reinstating it as a registered finance company, and jurisdiction of this cause is reserved to grant or deny such application, or grant it [fol. 59] upon such terms and conditions, if any, as the court may determine for the purpose of assuring further compliance with such finance company's sworn statement. Upon the entry of an order finding that a finance company has failed to comply with its sworn statement, as aforesaid, if the Manufacturer shall have made the application for such an order, or upon service upon the Manufacturer of a copy of said order certified by the Clerk of the Court if another party shall have made such application, the Manufacturer shall notify its dealers of the entry and the terms of such order and shall treat said company as a company that is not a registered finance company or as the order of the court may require.

8. Withdrawal of its sworn statement by a registered finance company and any order suspending or revoking the registration of any registered company or dismissing the application shall be applicable to all finance companies embraced by the sworn statement under clause (E) thereof.

9. Service of all papers hereinbefore required to be made upon the Manufacturer shall be made personally upon an officer of the Manufacturer, or by registered mail to the Manufacturer, at its principal office now located in Highland Park, Detroit, Michigan.

10. Service of all papers upon a finance company pursuant to this decree shall be made personally or by registered mail addressed to it at its principal office as shown in its statement.

(k) The Manufacturer shall not, except as hereinafter provided, recommend, endorse or advertise the Respondent Finance Company or any other finance company or companies to any dealer or to the public; provided, however, that nothing in this decree contained shall prevent the Manufacturer in good faith:

(1) From adopting from time to time a plan or plans of financing retail sales of new automobiles made by the Manu-

facturer or from time to time withdrawing or modifying the same;

(2) From recommending to its dealers the use of such plans;

(3) From advising its dealers that such plans are available through all registered finance companies which have [fol. 60] indicated their readiness to do business under the plan in such dealers' area or from advising the names of such companies;

(4) From advertising to the public and recommending the use of such plans;

(5) From advertising to the public that such plans are available through all registered finance companies which have indicated their readiness to do business under the plan in the area to which such advertisement is directed or from advertising the names of such companies.

1. The Manufacturer shall notify each finance company, which makes written specific or continuing request therefor by registered mail, of every plan and modification thereof that the Manufacturer shall adopt. The notice shall set forth the provisions of the plan or modification and the date, not less than thirty days after the date of mailing the notice, upon which the plan or modification shall go into effect. Any registered finance company so notified may before that date file with the court notice in writing setting forth that it withdraws its sworn statement because it does not intend to be bound by said plan or modification, as the case may be, and serve upon the Manufacturer a copy of said notice certified by the Clerk of the Court, and thereupon the finance company at once and without lapse of any time shall cease to be a registered finance company and the Manufacturer shall notify its dealers that said finance company has ceased to be a registered finance company.

2. Nothing in this decree shall prevent the Manufacturer from obtaining such assurances as it may desire from one or more finance companies before or after adoption of any plan or modification that it or they will make such plan or modification available for at least a specified period of time; provided, however, that the Manufacturer may not give such finance company or finance companies, as consideration for such assurances, any consideration prohibited by this decree.

3. The adoption or modification of any plan under this sub-paragraph (k) shall not preclude any aggrieved finance company or any other aggrieved person, who considers that such plan or modification constitutes an unreasonable restraint of trade or commerce in automobiles under the Sher- [fol. 61] man Anti-trust Law from applying to this court to vacate such plan, and the court reserves jurisdiction to make an order upon such application approving or vacating such plan, upon the execution of proper bond against damages for an order of vacation subsequently reversed or vacated.

(l) The Manufacturer shall not use any information obtained from any dealer, his agents, representatives, servants and employees, either directly by examination or inspection of his books or records, or through financial, operating or other statements or reports or otherwise, nor shall it require disclosure of any such information, for the purpose of influencing such dealer to patronize Respondent Finance Company or any other finance company or group of finance companies. Nothing herein contained shall apply to the disclosure or use of any information at the dealer's written request or for the purpose of assisting the dealer, at his specific written request, to obtain wholesale or retail financing or special facilities or services from Respondent Finance Company or any other finance company designated by the dealer in such written request.

7. The Respondent Finance Company:

(a) Shall not represent in any manner to any dealer that the Manufacturer requires him to patronize Respondent Finance Company, or that his failure to do so will result in the cancellation or termination by the Manufacturer of his contract, franchise or agreement, or in the loss of any advantage, service or facility furnished by the Manufacturer, or that Respondent Finance Company can obtain from the Manufacturer any facility, service or privilege which is not available to any other finance company, except (if Respondent Finance Company is a registered finance company) such services, facilities or privileges as result from the registration of a registered finance company, under paragraph 6 of this decree;

(b) Until further order of this court pursuant to paragraph 8 hereof, shall pay to every dealer who ceases to do

business with it the amount of all reserves standing to the credit of such dealer, less any off-setting indebtedness of [fol. 62] such dealer, such payment to be made not later than thirty (30) days after liquidation of all of the retail paper acquired from such dealer, and shall comply with any provisions relating thereto contained in any further decree entered pursuant to paragraph 8 of this decree;

(c) Shall not enter into any contract, agreement or understanding with any dealer, in connection with wholesale financing for which a separate charge is not made, which requires the dealer to deal with Respondent Finance Company in respect of retail financing of automobiles not financed at wholesale by Respondent Finance Company;

(d) Shall not, except upon written request of the dealer or prospective dealer, arrange or agree with the Manufacturer that an agent of the Manufacturer and an agent of Respondent Finance Company shall together be present with any dealer or prospective dealer for the purpose of influencing the dealer or prospective dealer to patronize Respondent Finance Company; provided, however, that it shall not be a violation of this decree for Respondent Finance Company by joint conference with a dealer or prospective dealer and a representative of the Manufacturer to agree to furnish to such dealer or prospective dealer, because of his financial situation or requirements, special facilities or services (such term not including only the financing of the shipment or delivery of automobiles to such dealer or prospective dealer and/or only the purchase or acquisition of retail time sales paper from him in the regular course of business) and in part consideration of such special facilities or services to arrange for the dealer or prospective dealer to do business with Respondent Finance Company on an exclusive basis for such reasonable period of time as may be agreed between them.

8. In the event that a final decree not subject to further review is entered by a court of competent jurisdiction in any proceeding hereafter instituted by the United States against General Motors Corporation and General Motors Acceptance Corporation, granting relief to the Government against said corporations upon allegations substantially identical with the allegations in Paragraph 18 of Section III of the petition herein, then and in that event the court

shall have jurisdiction to enter its supplemental decree herein granting such relief, if any, against the Respondent Finance Company or any of them, with respect to the [fol. 63] allegations of said paragraph of the petition, as justice may then require. Such proceeding shall be upon application of the United States and upon proper notice and opportunity for hearing to the respondents and the presentation of evidence (including evidence with respect to the other acts and practices of the Respondent Finance Company and the Manufacturer alleged in the petition and evidence of the acts and practices of other finance companies and the volume of business done by them) relevant in determining the legality under the Sherman Anti-trust Law of the acts and practices of the Respondent Finance Company alleged in Paragraph 18 of Section III of the petition and established before the court, considered in combination with any other acts and practices of the Respondent Finance Company and the Manufacturer alleged in the petition and established before the court, and relevant in determining what further decree, if any, is necessary in addition to this decree in order to require Respondent Finance Company thereafter to conduct its business in accordance with the Sherman Anti-trust Law in respect of the acts and practices alleged in said paragraph, reserving to each of the Respondent Finance Company the right to present all defenses in law or fact as to any of the matters tendered by the Government in such proceeding which would be open if this decree had not been entered, provided, however, that such supplemental decree shall be subject to review as fully as though entered as the final decree in an original non-jury action and shall be vacated upon motion of any party if not so reviewable.

9. The respondents shall not in combination or conspiracy do any act which this decree forbids or omit any act which this decree requires.

10. Upon complaint by the petitioner that any respondent has failed to comply with the provisions of the foregoing sub-paragraphs (e), (f), (i) and (l) of paragraph 6, or of sub-paragraph (d) of paragraph 7 of this decree, and the defense of such respondent that the act or acts complained of were not done for the forbidden purpose or purposes, the burden shall be upon such respondent to prove that the act complained of was done for a purpose not forbidden.

11. The Manufacturer shall mail a copy hereof to its dealers, regional and district managers and field representatives in the continental United States and Respondent Finance [fol. 64] Company shall mail a copy hereof to its zone, regional and branch managers in the continental United States; and said Manufacturer and Respondent Finance Company respectively shall within thirty (30) days after the entry of this decree file with this court an affidavit or affidavits showing the manner in which they severally shall have complied with this provision hereof.

12. The Respondent Finance Company shall not pay to any automobile manufacturing company and the Manufacturer shall not obtain from any finance company any money or other thing of value as a bonus or commission on account of retail time sales paper acquired by the finance company from dealers of the Manufacturer. The Manufacturer shall not make any loan to or purchase the securities of Respondent Finance Company or any other finance company, and if it shall pay any money to Respondent Finance Company or any other finance company with the purpose or effect of inducing or enabling such finance company to offer to the dealers of the Manufacturer a lower finance charge than it would offer in the absence of such payment, it shall offer in writing to make, and if such offer is accepted it shall make, payment upon substantially similar bases, terms and conditions to every other finance company offering such lower finance charge; provided, however, that nothing in this paragraph contained shall be construed to prohibit the Manufacturer from acquiring notes, bonds, commercial paper, or other evidence of indebtedness of Respondent Finance Company or any other finance company in the open market.

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance

company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right [fol. 65] of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted.

12a. It is a further express condition of this decree that:

(1) If the proceeding now pending in this court against General Motors Corporation instituted by the filing of an indictment by the Grand Jury on May 27, 1938, No. 1039, or any further proceeding initiated by reindictment of General Motors Corporation for the same alleged acts, is finally terminated in any manner or with any result except by a judgment of conviction against General Motors Corporation and General Motors Acceptance Corporation therein, then and in that event, every provision of this decree except those contained in this sub-paragraph (1) of this paragraph 12a of this decree, shall forthwith become inoperative and be suspended, until such time as restraints and requirements in terms substantially identical with those imposed herein, shall be imposed upon General Motors Corporation and General Motors Acceptance Corporation and their subsidiaries either (a) by consent decree, or (b) by final decree of a court of competent jurisdiction not subject to further review, or (c) by decree of such court which although subject to further review continues effective. The court reserves jurisdiction upon application of any party to enter orders at the foot of this decree in accordance with the provisions of this paragraph.

(2) A general verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to be a determination of the illegality of any agreement, act or practice of General Motors Corporation which is held by the trial court, in its instructions to the jury, to constitute a proper basis for the return of a general verdict of guilty. A special verdict of guilty returned against General Motors Corporation in said proceeding, followed by the entry of judgment thereon, shall be deemed to constitute a determination of the illegality of any agreement, act or

practice of General Motors Corporation which is the subject of such special verdict of guilty. A plea of guilty or nolo contendere by General Motors Corporation, followed by the entry of judgment of conviction thereon, shall be deemed to be a determination of the illegality of any agreement, act or practice which is the subject matter of such [fol. 66] plea. The determination, in the manner provided in this clause, of the illegality of any agreement, act or practice of General Motors Corporation shall (for the purposes of clause (3) of this paragraph) be considered as the equivalent of a decree restraining the performance by General Motors Corporation of such agreement, act or practice, unless or until such judgment is reversed, or unless such determination is based, in whole or in part, (a) upon the ownership by General Motors Corporation of General Motors Acceptance Corporation, or (b) upon the performance by General Motors Corporation of such agreement, act or practice in combination with some other agreement, act or practice with which the respondents are not charged in the indictment heretofore filed against them by the Grand Jury on May 27, 1938, No. 1040;

(3) After the entry of a consent decree against General Motors Corporation, or after the entry of a litigated decree, not subject to further review, against General Motors Corporation by a court of the United States of competent jurisdiction, or after the entry of a judgment of conviction against General Motors Corporation in the proceeding hereinbefore referred to, or after January 1, 1940 (whichever date is earliest), the court upon application of any respondent from time to time will enter orders:

(i) suspending each of the restraints and requirements contained in sub-paragraphs (d) to (f) and (h) to (l), inclusive, of paragraph 6 of this decree to the extent that it is not then imposed, and until it shall be imposed, in substantially identical terms, upon General Motors Corporation and its subsidiaries, and suspending each of the restraints and requirements contained in sub-paragraphs (a), (c) and (d) of Paragraph 7 of this decree to the extent that it is not imposed and until it shall be imposed in substantially identical terms, upon General Motors Acceptance Corporation and its subsidiaries, either (w) by consent decree, or (x) by final decree of a court of competent jurisdiction not subject to further review, or (y) by decree of

such court which, although subject to further review, continues effective or (z) by the equivalent of such a decree as defined in clause (2) of this paragraph; provided, however, that if the provisions of a consent or litigated decree against General Motors Corporation and its subsidiaries [fol. 67] corresponding to sub-paragraphs (j) and (k) of paragraph 6 of this decree are different from said sub-paragraphs of this decree, then upon application of the respondents any provision or provisions of said sub-paragraphs will be modified so as to conform to the corresponding provisions of such General Motors Corporation decree;

(ii) suspending each of the restraints and requirements contained in the remaining sub-paragraphs (a), (b), (c) and (g) of paragraph 6 to the extent that it is not then imposed, and until it shall be imposed, upon General Motors Corporation and its subsidiaries in any manner specified in the foregoing sub-clause (i) of this clause (3), if any respondent shall show to the satisfaction of the court that General Motors Corporation or its subsidiaries is performing any agreement, act or practice prohibited to the Manufacturer by said remaining sub-paragraphs, and suspending each of the restraints and requirements contained in sub-paragraph (b) of Paragraph 7 of this decree to the extent that it is not imposed, and until it shall be imposed, upon General Motors Acceptance Corporation and its subsidiaries in any said manner, if any respondent shall show to the satisfaction of the court that General Motors Acceptance Corporation is performing any agreement, act or practice prohibited to Respondent Finance Company by said sub-paragraph (b) of Paragraph 7;

(iii) suspending the restraints of sub-paragraph (d) of paragraph 7 of this decree as to Respondent Finance Company, in the event that the restraints of sub-paragraph (i) of paragraph 6 of this decree are suspended as to the Manufacturer;

(4) The right of the respondents or any of them to make any application for the suspension of any provision of this decree in accordance with the provisions of this paragraph 12a and to obtain such relief is hereby expressly granted.

In the event that at any time prior to the date when General Motors Corporation has permanently divested itself of all ownership and control of and interest in General

Motors Acceptance Corporation, General Motors Acceptance Corporation shall make available to dealers of Gen- [fol. 68] eral Motors Corporation in any area a finance charge, on all or any class of automobiles sold by dealers of General Motors Corporation, less than the finance charge then generally available to dealers of the Manufacturer within such area, nothing in this decree shall prevent the Manufacturer from making, and the Manufacturer may make, adjustments, allowances or payments to or with all of its dealers in such area who agree to reduce to an amount approved by the Manufacturer (but not less than that then made available by General Motors Acceptance Corporation) the finance charges which such dealers of the Manufacturer in such area receive from any class of retail purchasers of automobiles, provided that such adjustments, allowances or payments shall not discriminate among such dealers in such area.

13. This decree shall not be pleaded in bar by the respondents in any action under the Anti-Trust Laws instituted by the petitioner against them or any of them in this court or in a court in any other judicial district as to matters arising after the entry of this decree; provided, however, that this paragraph shall not apply to matters which are covered by this decree or which form a part of the cause of action herein or which are a continuance or repetition of acts or practices in which the respondents now engage which form a part of the cause of action herein.

14. Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree to make application to the court at any time for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this decree, for the modification thereof (including, without limitation, any modification upon application of the respondents or any of them required in order to conform this decree to any Act of Congress enacted after the date of entry of this decree), for the enforcement of compliance therewith, the punishment of violations thereof, and the carrying out of the provisions of sub-paragraphs (j) and (k) of paragraph 6 hereof, and the October, 1938, Term of this court is hereby extended indefinitely for such purposes.

15. It is hereby further provided that if it shall appear to the court upon application of any respondent that, (A)

in any twelve (12) months' period after the date of entry of this decree, any present or future competitor of the Manufacturer other than General Motors Corporation or [fol. 69] Ford Motor Company shall have sold in the United States, or any State thereof, a quantity of automobiles that shall equal or exceed 25% of the automobiles sold by the Manufacturer in the United States or said State in said period, and (B) that such competitor is doing or engaging in any of the acts, practices, procedures or things then prohibited hereunder or is failing to do or engage in any act, practice, procedure or thing required hereunder, and (C) that the doing or engaging in of said acts, practices, procedures or things, or the omission of them, as the case may be, by such competitor has resulted or threatens to result in placing the Manufacturer at a competitive disadvantage in the sale of automobiles as against such competitor, and (D) that the petitioner herein has not obtained or is not proceeding with due diligence by civil or criminal proceedings to obtain an adjudication of the illegality of such acts, practices, procedures or things so performed or engaged in, or omitted to be performed or engaged in, as the case may be, under the Anti-Trust Laws, the court upon application of the respondents or any of them will enter its further order and decree providing that the provisions of this decree not so imposed upon or sought to be adjudicated against such competitor shall be inoperative and that they shall have no future force or effect in the United States or said State, as the case may be, and the right of the respondents to make such applications and to obtain such relief is hereby expressly granted.

It is hereby further provided that if it shall appear to the court upon application of any respondent that (A) in any twelve (12) months' period after the date of entry of this decree any present or future competitor of Respondent Finance Company other than General Motors Acceptance Corporation or Commercial Investment Trust Corporation or Universal Credit Company shall have financed the retail sale of a quantity of automobiles in the United States or any State thereof that shall equal or exceed 25% of the automobiles the sale of which was financed by Respondent Finance Company in the United States or said State in said period, and (B) that such competitor is doing or engaging in any of the acts, practices, procedures or things then prohibited hereunder or is failing to do or engage in any

act, practice, procedure or thing required hereunder, and (C) that the doing or engaging in of said acts, practices, procedures or things, or the omission of them, as the case may be, by such competitor has resulted or threatens to result in placing the Respondent Finance Company at a [fol. 70] competitive disadvantage in financing the sale of automobiles as against such competitor, and (D) that the petitioner herein has not obtained or is not proceeding with due diligence by civil or criminal proceedings to obtain an adjudication of the illegality of such acts, practices, procedures or things so performed or engaged in, or omitted to be performed or engaged in, as the case may be, under the Anti-Trust Laws, the court upon application of the respondents or any of them will enter its further order and decree providing that the provisions of this decree not so imposed upon or sought to be adjudicated against such competitor shall be inoperative and that they shall have no future force or effect in the United States or said State, as the case may be, and the right of the respondents to make such applications and to obtain such relief is hereby expressly granted.

16. Nothing in this decree shall limit the control by the Manufacturer of a subsidiary or limit the control by Respondent Finance Company of any subsidiary or affiliated company.

17. Whenever obligations are imposed upon the respondents by the laws or regulations of any state with which the respondents by law must comply in order to do business in such state, the court upon application of the respondents or any of them will from time to time enter orders relieving the respondents from compliance with any requirements of this decree in conflict with such laws or regulations and the right of the respondents to make such applications and to obtain such relief is expressly granted.

18. After four years after the date of the entry of this decree any respondent may apply to the court to vacate this decree or any supplemental decree entered pursuant to paragraph 8 hereof or to vacate or modify any provision thereof on the ground that the commission or omission of any of the agreements, acts or practices herein prohibited or required, under the economic or competitive conditions existing at the time of such application, does not constitute an unreasonable restraint of trade or commerce

among the states in automobiles within the meaning of the Sherman Anti-trust Law as amended to the date of such application, regardless of whether or not such economic or competitive conditions are new or unforeseen. Jurisdiction of this cause is retained for the purpose of granting or denying such applications as justice may require and [fols. 71-72] the October, 1938, Term of this court is hereby extended indefinitely for such purpose and the right of the respondents to make such applications and to obtain such relief is expressly granted. The provisions of this paragraph are in addition to, and not in limitation of, the provisions of any other paragraph of this decree.

19. This decree shall have no effect with respect to respondents' acts and operations without the continental United States or to their acts and operations within the continental United States relating, exclusively, to acts and operations without the continental United States.

20. This decree shall go into effect one hundred and twenty days after the date of entry hereof, except as to the provisions of paragraphs 8, 11, and 12 hereof, which said paragraphs shall take effect as therein provided.

Thos. W. Slick, District Judge.

Dated: November 15, 1938.

[fol. 73] In United States District Court

[Title omitted]

Notice to All Parties and Their Attorneys of Motion and Hearing Thereon—Filed December 17, 1940

Please take notice that the United States of America, complainant in the above entitled case, has filed in the above named Court a motion entitled Motion for Modification of Final Decree, a copy whereof is hereto attached, and that said Court has set the said motion for hearing by the Court at the Court Room of said United States District Court in the Masonic Temple, Muenick Court, Hammond, Indiana, at 11 A. M. on Saturday, December 21, 1940, or as soon immediately thereafter as shall be convenient for the Court. Please take notice that the United States shall then and there present such motion for allowance.

December 17, 1940.

(S.) James R. Fleming, United States Attorney for said Northern District of Indiana.

[fol. 74] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER FOR HEARING—December 17, 1940

The plaintiff, United States of America, in the above entitled cause having filed its motion for modification of final decree herein and having applied for a hearing on said motion for Saturday December 21, 1940,

The Court now, pursuant to the provisions of Section 6(d) of the Rules of Civil Procedure, for the causes shown in said application sets said hearing of said motion for modification of final decree for Saturday, December 21, 1940, at Eleven (11:00) A. M., in the United States District Court Room located in the Masonic Temple Building, at Hammond, Indiana, and further

Orders that notice of said hearing be immediately mailed by the plaintiff to counsel for the defendants.

Dec. 17, 1940.

(S.) Thos. W. Slick, Judge of the U. S. District Court, Northern District of Indiana.

[fol. 75] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR MODIFICATION OF FINAL DECREE—Filed December 17, 1940

The United States of America, plaintiff in the above entitled action, by James R. Fleming, United States Attorney for the Northern District of Indiana, acting under the direction of the Attorney General, represents and moves as follows:

That on November 15, 1938, a final decree was entered by consent in this case containing a section numbered 12, to which reference is hereby made; that the terms of said section 12, among other things, enjoined the respondent finance company from paying to any automobile manufacturing company, and enjoined the respondent manufacturer from obtaining from any finance company, any commission or return arising from the handling of time paper acquired by the finance company from dealers of the manufacturer,

and likewise enjoined the manufacturer from making loans to, or, subject to limitations, purchasing the securities of, the respondent finance company or any other finance company, and otherwise affected the relationship between the manufacturer and the finance companies.

Section 12 also provided in substance that if an effective final order or decree by the terms of which General Motors Corporation should be required to divest itself of all ownership and control of General Motors Acceptance Corpo- [fol. 76] ration and of all interest therein should not have been entered on or before January 1, 1941, then nothing in said decree should preclude the manufacturer from acquiring and retaining ownership or control of or an interest in any finance company.

The plaintiff represents that it has expeditiously taken and pursued all courses necessary and proper for procuring such order and decree against General Motors Corporation; that at the time when the decree in this case was entered the length of time which would be required to procure said order and decree against General Motors Corporation was by mistake of the parties underestimated; that the entering of such order and decree against General Motors Corporation was and is dependent on the proving of certain involved facts and on the establishing of certain numerous disputed principles of law; that it was then believed by the parties to said consent decree that the case pertaining to General Motors Corporation could be more promptly disposed of than subsequent conditions have indicated and that the aforesaid final order or decree could be procured on or before January 1, 1941; that the issues which would be involved in a case resulting in such final order or decree have been to a great extent, and are, involved in a certain criminal proceeding, to wit, United States of America v. General Motors Corporation, et al., Criminal Case No. 1039, arising on an indictment returned in this Court on the 27th day of May, 1938; that the parties hereto, at the time of the entering of the consent decree, anticipated that such criminal case would be disposed of without extensive and lengthy litigation, and that by its results the issues in said civil suit would be substantially effected and settled; that said criminal action unexpectedly developed many pre- [fol. 77] liminary hearings and interlocutory matters, and as a result its final disposition has not yet been reached; that after innumerable pleas, motions and hearings and

a long trial to a jury, a verdict of guilty against General Motors Corporation, General Motors Acceptance Corporation and other defendants has been returned and sentence thereon was imposed on November 17, 1939; that judgment has been entered thereon; that an appeal from the aforesaid judgment is now pending, and that the issues of law therein raised are the same in many particulars as the issues of law which will be involved at the trial of the aforesaid civil suit which aims at requiring General Motors Corporation to divest itself of ownership and control of General Motors Acceptance Corporation; that the plaintiff on, to wit, the 4th day of October, 1940, duly filed complaint in the District Court of the United States for the Northern District of Illinois, Eastern Division, against said General Motors Corporation and General Motors Acceptance Corporation, whereby it seeks the remedy referred to in said section 12, to wit, that General Motors Corporation shall divest itself of all ownership and control of General Motors Acceptance Corporation and all interest therein; that the aforesaid case is entitled United States of America, plaintiff, v. General Motors Corporation and General Motors Acceptance Corporation, defendants, Civil Action No. 2177, in said Court; that the aforesaid criminal case now pending on appeal, and the aforesaid civil action now pending in the said Northern District of Illinois, Eastern Division, involve to a great extent the same facts and an adjudication in the former will constitute res adjudicata and will be binding on the defendants in the trial of the latter; that the settling of the issues of law and fact in the appealed case will simplify and shorten the trial in the civil suit; that should the plaintiff have proceeded in the trial of the civil [fol. 78] suit before the said criminal suit was disposed of, the trial of said civil suit would require the consummation of much time in establishing facts which under the principle of res adjudicata will be promptly and briefly proved after the final adjudication of the criminal case; that to proceed with the trial of the civil suit before the criminal action is disposed of would needlessly greatly lengthen the time of the Court required for hearing of the aforesaid case, would involve great additional and unnecessary expense to all parties, would interfere with the efficiency in presenting the appeal in the criminal case on the one hand and the trial of the civil case on the other, and would result in a needless retrial of the same issues of law and facts;

that the aforesaid criminal appeal is now pending in the United States Circuit Court of Appeals for the Seventh Circuit, and that the aforesaid appeal should be disposed of within a reasonably short time; that the United States has proceeded with diligence in the instituting and prosecuting of the aforesaid civil case and will continue so to proceed; that a decision of the issues in that case will establish a precedent applicable to and controlling on the issues mentioned in said section 12; and that on account of the complication of the various proceedings herein described the aforesaid civil case cannot be disposed of on or before January 1, 1941, and before the aforesaid case can be disposed of and final order or decree therein entered, at least an additional year will elapse.

The plaintiff further represents that this Court has, by section numbered 18 of the aforesaid consent decree in this case, retained jurisdiction for the purpose of granting or denying such application for modification of said decree as justice may require.

And the plaintiff therefore moves that the aforesaid de-
[fol. 79] cree as contained in said section 12 be modified in such manner that the words in the second paragraph of said section 12, to wit, "on or before January 1, 1941", be modified and considered as if they had been written as follows: "on or before January 1, 1942", and that at the close of the said paragraph in which the aforesaid words occur the following sentence be inserted: "The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid decree may be entered"; with the result that said decree shall be modified in such manner that the said part of said section 12 shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1942, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or

from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid decree may be entered.

(S.) James R. Fleming, United States Attorney for the Northern District of Indiana.

Dated —— —, ——.

[fols. 80-81] AFFIDAVIT IN SUPPORT OF MOTION FOR MODIFICATION OF FINAL DECREE

I, Edmond J. Ford, being duly sworn, do hereby make oath and depose as follows:

I have read the attached Motion for Modification of Final Decree in the above entitled case and am familiar with the facts therein set forth and the circumstances under which the aforesaid motion is filed. I hereby make oath that the statements therein set forth are true. The sources of my information are original documents and facts learned in my handling of the matters referred to in the aforesaid motion as Special Assistant to the Attorney General of the United States.

(S.) Edmond J. Ford, Special Assistant to the Attorney General.

UNITED STATES OF AMERICA,
District of Columbia, ss:

December 11, 1940

Personally appeared before me, Edmond J. Ford, to me known, and signed the aforegoing affidavit in my presence, and being duly sworn did make oath to the truth of the statement aforesaid signed by him.

Dorothy Heale, Notary Public. (Seal.)

My Commission expires Oct. 2, 1944.

[fol. 82] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF CHRYSLER CORPORATION, DESOTO MOTORS CORPORATION, PLYMOUTH MOTOR CORPORATION, DODGE BROTHERS CORPORATION, AND CHRYSLER SALES CORPORATION, TO MOTION FOR MODIFICATION OF FINAL DECREE—Filed December 21, 1940

The defendants, Chrysler Corporation, DeSoto Motors Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation, and Chrysler Sales Corporation, by S. J. Crumpacker and Larkin, Rathbone & Perry, their attorneys, answer the Motion for Modification of Final Decree as follows:

(1) Defendants deny that plaintiff "has expeditiously taken and pursued all courses necessary and proper" for procuring an order and decree against General Motors Corporation requiring it to divest itself of all ownership and control of General Motors Acceptance Corporation and of interests therein, or that "the United States has proceeded with diligence in the instituting and prosecuting of the * * * civil case" against General Motors Corporation or "will continue so to proceed," or that "the issues which would be involved in a case resulting in such final order or decree have been to a great extent, and are, involved in Criminal Case No. 1039 in this Court," or that "said criminal action unexpectedly developed many preliminary hearings and interlocutory matters," or that there were "innumerable pleas, motions, and hearings" in said [fol. 83] criminal proceedings or any unusually large number of such pleas, motions, or hearings, or that the issues will be disposed of in whole or in part by the said criminal proceedings, as alleged in said motion. On the contrary, said motion shows upon its face that plaintiff has not expeditiously taken or pursued all necessary and proper steps since, among other things, civil proceedings against General Motors Corporation were not even instituted until October 4, 1940, nearly two years after the consent decree of November 15, 1938, (thus allowing itself less than three months to complete an important and contested case), had been entered and since plaintiff has chosen to rely upon criminal proceedings which are not even alleged to be determinative of all the issues. These defendants allege that

plaintiff has been dilatory in prosecuting to a conclusion either the said criminal or civil proceedings.

(2) Defendants deny that "at the time when the decree in this case was entered the length of time which would be required to procure said order and decree against General Motors Corporation was by mistake of the parties underestimated," or "that it was then believed by the parties * * * that the case pertaining to General Motors Corporation could be more promptly disposed of than subsequent conditions have indicated," or "that the aforesaid final order or decree could be procured on or before January 1, 1941," or "that the parties hereto, at the time of the entering of the consent decree, anticipated that (the) criminal case would be disposed of without extensive and lengthy litigation," or "that by its results the issues in said civil suit would be substantially effected and settled" or "sim-
[fol. 84] plified and shortened," or "that said criminal action unexpectedly developed many preliminary hearings and interlocutory matters," as alleged in said motion. On the contrary, said motion shows upon its face, and upon the face of the decree, that no condition of mistake, surprise, inadvertence, or excusable neglect is sought to be corrected. These defendants allege that the parties discussed at length the period within which the plaintiff should procure an order or decree, that the possibilities of delay were canvassed in detail and that both parties gave their consent to the consent decree with full knowledge and without error. Edmond J. Ford, upon whose affidavit the plaintiff's motion is made, was not present at the conferences or negotiations at which the parties determined the form of the consent decree entered herein.

(3) Defendants allege that said motion is not timely. On the contrary, it is clear upon the face of the motion that plaintiff, long aware of the facts, such as they are, which it asserts, has made its motion more than six months after the entry of the decree and at the last practicable moment before the expiration date of the provision of the decree sought to be extended.

(4) Upon the face of the motion, and upon the records of this Court in this cause, defendants allege that the intent of the parties and the language of the decree are clear and in accord, without inadvertence and of no uncertain intendment; that the requisites of mistake, inadvertence, surprise,

or excusable neglect are not alleged and, on the contrary, are negatived on the face of the record; and that diligence [fol. 85] on the part of plaintiff is not only not material but is conclusively negatived on the face of the record.

Wherefore, defendants pray:

(1) That said motion be dismissed forthwith; or

(2) That, if said motion be not dismissed, plaintiff be required to plead or elect with particularity (a) whether it relies upon mistake, surprise, inadvertence, or excusable neglect (if so, setting forth with certainty the facts upon which such claim is made) or (b) whether it relies upon changed basic conditions of fact or law (if so, setting forth with particularity such changed conditions); and that defendants, thereafter, be given sufficient notice and opportunity to prepare its response and defense; or

(3) That, if said motion be not dismissed and if plaintiff is not required to plead further, the motion now filed herein be set down for hearing for the taking of proof on the merits, upon such terms and conditions as will assure defendants due notice of the issues and adequate opportunity to prepare its response or defense thereto.

This motion is made upon all the records of this Court in this cause.

There is filed herewith a brief memorandum of points and authorities in support hereof.

Dated: December 21, 1940.

Parker, Crabill, Crumpacker, May, Carlisle & Beamer, (Sgd.) G. J. Crumpacker, Office & Post-Office Address: J. M. S. Building, South Bend, Indiana. (Sgd.) Larkin, Rathbone & Perry; (Sgd.) Nicholas Kelley, Office & Post-Office Address: 70 Broadway, New York, N. Y., Attorneys for Defendants Chrysler Corporation, DeSoto Motors Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation.

[fol. 86] AFFIDAVIT OF WILLIAM STANLEY

STATE OF INDIANA,
St. Joseph County, ss:

William Stanley, being duly sworn, says: That he is an attorney and was at the time of the negotiations and entry

herein of the Final Decree one of the attorneys for the above-named defendants, Chrysler Corporation, DeSoto Motors Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation; that he was present at substantially all of the conferences and negotiations at which the parties agreed upon the form of the Final Decree entered herein on the consent of the parties; that he has read and knows the contents of the foregoing answer to the Complainant's Motion for Modification of Final Decree therein; that said answer is true of his own knowledge.

(Signed) William Stanley.

Sworn to before me this 21st day of December, 1940.
(Signed) Meelia M. Neis, Notary Public. (Seal.)
N. Y. Com. expires Sept. 30, 1944.

[fol. 87] A

IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVISION

Civil No. 9

UNITED STATES OF AMERICA, Complainant,

vs.

CHRYSLER CORPORATION, et al., Defendants

Hearing on Motion to Modify Consent Decree

Transcript of proceedings, held at Hammond, Indiana, on Saturday, December 21, 1940, before Hon. Thomas W. Slick, Judge.

APPEARANCES:

On behalf of Complainant:

E. J. Ford, Special Assistant to the Attorney General, Luther M. Swygert, Assistant U. S. Attorney;

On behalf of Defendant Chrysler Corporation:

Nicholas Kelley, Esq., of the firm of Larkin, Rathbone & Perry;

William Stanley, Esq., of the firm of Cummings & Stanley;

S. J. Crumpacker, Esq., of the firm of Parker, Crabill, Crumpacker, May, Carlisle & Beamer.

[fol. 88] On behalf of Defendant Commercial Credit Company:

W. Russell Mules, Esq., associated with Duane R. Dills, Esq.

[fol. 89] ARGUMENT ON BEHALF OF COMPLAINANT

The Court: Mr. Ford.

Mr. Ford: May it please the Court: This matter comes up upon certain motions for the purpose of amending consent decrees which were entered by your Honor some time ago. The Chrysler Corporation is represented. I believe that the Commercial Credit is not represented, but I have affidavits of service which I present to the Court. (Handing papers.)

Mr. Mules: Mr. Ford, I didn't get a chance to speak to you, but I am here on behalf of the Commercial Credit Company.

Mr. Ford: Very well. I beg your pardon; I didn't know that you were here. Now, if your Honor please——

The Court: Who is represented here now?

Mr. Ford: I am representing the Government.

The Court: Yes.

Mr. Ford: Mr. Kelley is representing the Chrysler Corporation and all of its associates, and Mr. Stanley, and Mr. Crumpacker is also with the Chrysler associates, and Mr. Mules for Commercial Credit and the associates of Commercial Credit. He is for Commercial Credit Corporation, which was one of the defendants in the original suit, and the other gentlemen——

The Court: Who appears for Commercial Credit?

Mr. Ford: Mr. Mules.

Mr. Mules: Mules, M-u-l-e-s.

The Court: All right.

[fol. 90] Mr. Ford: If your Honor please, these consent decrees were entered November 5th, 1938, if I have the date correctly, and they were against both Ford and Chrysler. The motions which are up this morning are the same in both

cases. In the Ford case there is a stipulation allowing the motion which I am about to read. In the Chrysler case the allowance of that motion is disputed.

Now, if your Honor please, I will read the motion. It is the same in both cases, and the substance of it is as follows:

"The United States of America, plaintiff in the above entitled action, by James R. Fleming, United States Attorney for the Northern District of Indiana, acting under the direction of the Attorney General, represents and moves as follows:

"That on November 15, 1938, a final decree was entered by consent in this case containing a section numbered 12, to which reference is hereby made; that the terms of said section 12, among other things, enjoined the respondent finance company from paying to any automobile manufacturing company, and enjoined the respondent manufacturer from obtaining from any finance company, any commission or return arising from the handling of time paper acquired by the finance company from dealers of the manufacturer, and likewise enjoined the manufacturer from making loans to, [fol. 91] or, subject to limitations, purchasing the securities of, the respondent finance company or any other finance company, and otherwise affected the relationship between the manufacturer and the finance companies.

"Section 12 also provided in substance that if an effective final order or decree by the terms of which General Motors Corporation should be required to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein should not have been entered on or before January 1, 1941, then nothing in said decree should preclude the manufacturer from acquiring and retaining ownership or control of or an interest in any finance company.

"The plaintiff represents that it has expeditiously taken and pursued all courses necessary and proper for procuring such order and decree against General Motors Corporation; that at the time when the decree in this case was entered the length of time which would be required to procure said order and decree against General Motors Corporation was by mistake of the parties underestimated; that the entering of such order and decree against General Motors Corporation was and is dependent on the proving of certain involved facts and on the establishing of certain numerous disputed

principles of law; that it was then believed by the parties to said consent decree that the case pertaining to General [fol. 92] Motors Corporation could be more promptly disposed of than subsequent conditions have indicated and that the aforesaid final order or decree could be procured on or before January 1, 1941; that the issues which would be involved in a case resulting in such final order or decree have been to a great extent, and are, involved in a certain original proceeding, to wit, United States of America v. General Motors Corporation, et al., Criminal Case No. 1039, arising on an indictment returned in this court on the 27th day of May, 1938; that the parties hereto, at the time of the entering of the consent decree, anticipated that such criminal case would be disposed of without extensive and lengthy litigation, and that by its results the issues in said civil suit would be substantially effected and settled; that said criminal action unexpectedly developed many preliminary hearings and interlocutory matters, and as a result its final disposition has not yet been reached; that after innumerable pleas, motions and hearings and a long trial to a jury, a verdict of guilty against General Motors Corporation, General Motors Acceptance Corporation and other defendants has been returned and sentence thereon was imposed on November 17, 1939; that judgment has been entered thereon; that an appeal from the aforesaid judgment is now pending, and that the issues of law therein raised are the same in many particulars as the issues of law which will be involved at the [fol. 93] trial of the aforesaid civil suit which aims at requiring General Motors Corporation to divest itself of ownership and control of General Motors Acceptance Corporation; that the plaintiff on, to wit, the 4th day of October, 1940, duly filed complaint in the District Court of the United States for the Northern District of Illinois, Eastern Division, against said General Motors Corporation and General Motors Acceptance Corporation, whereby it seeks the remedy referred to in said section 12, to wit, that General Motors Corporation shall divest itself of all ownership and control of General Motors Acceptance Corporation and all interest therein; that the aforesaid case is entitled United States of America, plaintiff, v. General Motors Corporation and General Motors Acceptance Corporation, defendants——"

The Court: When was that suit brought?

Mr. Ford: That was brought on the 4th day of October, 1940.

"—that the aforesaid criminal case now pending on appeal, and the aforesaid civil action now pending in the said Northern District of Illinois, Eastern Division, involve to a great extent the same facts and an adjudication in the former will constitute res adjudicata and will be binding on the defendants in the trial of the latter; that the settling of the issues of law and fact in the appealed case will simplify and shorten the trial in the civil suit; that should the plain- [fol. 94] tiff have proceeded in the trial of the civil suit before the said criminal suit was disposed of, the trial of said civil suit would require the consummation of much time in establishing facts which under the principle of res adjudicata will be promptly and briefly proved after the final adjudication of the criminal case; that to proceed with the trial of the civil suit before the criminal action is disposed of would needlessly greatly lengthen the time of the court required for hearing of the aforesaid case, would involve great additional and unnecessary expense to all parties, would interfere with the efficiency in presenting the appeal in the criminal case on the one hand and the trial of the civil case on the other, and would result in a needless retrial of the same issues of law and facts; that the aforesaid criminal appeal is now pending in the United States Circuit Court of Appeals for the Seventh Circuit, and that the aforesaid appeal should be disposed of within a reasonably short time; that the United States has proceeded with diligence in the instituting and prosecuting of the aforesaid civil case and will continue so to proceed; that a decision of the issues in that case will establish a precedent applicable to and controlling on the issues mentioned in said section 12; and that on account of the complication of the various proceedings herein described the aforesaid civil case can not be disposed of on or before January 1, 1941, [fol. 95] and before the aforesaid case can be disposed of and final order or decree therein entered, at least an additional year will elapse.

"The plaintiff further represents that this court has, by section numbered 18 of the aforesaid consent decree in this case, retained jurisdiction for the purpose of granting or

denying such application for modification of said decree as justice may require.

"And the plaintiff therefore moves that the aforesaid decree as contained in said section 12 be modified in such manner that the words in the second paragraph of said section 12, to wit, 'on or before January 1, 1941,' be modified and considered as if they had been written as follows: 'on or before January 1, 1942,' and that at the close of the said paragraph in which the aforesaid words occur the following sentence be inserted: 'The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered:' with the result that said decree shall be modified in such manner that the said part of said section 12 shall read as follows:

"It is an express condition of this decree that notwithstanding the provisions of the preceeding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further [fol. 96] review shall not have been entered on or before January 1, 1942, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted. The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid order or decree may be entered."

Now the following stipulation is presented in the Ford case. "It is hereby stipulated and agreed by all parties to this suit that the motion of the United States of America filed herewith for modification of the final decree, filed November 5, 1938, shall be allowed, and that the aforesaid

final decree shall be modified with the result that the second paragraph of section 12 therein shall read as follows." [fol. 97] Then follows a quotation the same as I have in the motion, and the stipulation proceeds, "And it is further stipulated and agreed that, except as modified, the decree as previously entered shall stand in full force and effect. The aforesaid parties acknowledge that due service of notice of the filing of the aforesaid motion has been received and waive their right to be heard on the granting thereof." That is signed by counsel for all parties. With that is a prepared decree.

Now in the Chrysler case the defendants have filed a document of which I have at the present moment a substantial copy, unless you want to show me the revised copy.

Mr. Kelley: Didn't I give you that?

Mr. Ford: You did give it to me but I gave it to Mr. Swygert.

Mr. Swygert: I don't have it.

Mr. Ford: I can read your copy if you don't mind.

Mr. Kelley: No, that is for you. (Handing paper.)

Mr. Ford: The defendants Chrysler Corporation and their associates have filed the following——

The Court: Who are the associates?

Mr. Ford: The Chrysler Corporation, DeSoto——

The Court: Commercial Credit?

Mr. Ford: No.

The Court: Oh, you mean the——

[fol. 98] Mr. Ford: There are two groups. In the decree they are mentioned as Chrysler and associates or the Chrysler group.

The Court: Yes.

Mr. Ford: And then the Commercial Credit and associates or the Commercial Credit group.

The Court: I know what you mean.

Mr. Ford: This, I believe, is only signed by Chrysler.

The Court: They have filed no answer.

Mr. Ford: No, that's all right.

"The defendants, Chrysler Corporation, DeSoto Motors Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation, and Chrysler Sales Corporation, by S. J. Crumpacker and Larkin, Rathbone & Perry, their attor-

neys, answer the motion for modification of final decree as follows:

"(1) Defendants deny that plaintiff 'has expeditiously taken and pursued all courses necessary and proper' for procuring an order and decree against General Motors Corporation requiring it to divest itself of all ownership and control of General Motors Acceptance Corporation and of interests therein, or that 'the United States has proceeded with diligence in the instituting and prosecuting of the civil case' against General Motors Corporation or 'will continue so to proceed,' or that 'the issues which would be involved in a case resulting in such final order or decree have been to a great extent, and are, involved in Criminal Case No. [fol. 99] 1039 in this court,' or that 'said criminal action unexpectedly developed many preliminary hearings and interlocutory matters,' or that there were 'innumerable pleas, motions, and hearings' in said criminal proceedings or any unusually large number of such please, motions, or hearings, or that the issues will be disposed of in whole or in part by the said criminal proceedings, as alleged in said motion. On the contrary, said motion shows upon its face that plaintiff has not expeditiously taken or pursued all necessary and proper steps since, among other things, civil proceedings against General Motors Corporation were not even instituted until October 4, 1940, nearly two years after the consent decree of November 15, 1938 (thus allowing itself less than three months to complete an important and contested case), had been entered and since plaintiff has chosen to rely upon criminal proceedings which are not even alleged to be determinative of all the issues. These defendants allege that plaintiff has been dilatory in prosecuting to a conclusion either the said criminal or civil proceedings.

"(2) Defendants deny that 'at the time when the decree in this case was entered the length of time which would be required to procure said order and decree against General Motors Corporation was by mistake of the parties underestimated,' or 'that it was then believed by the parties that the case pertaining to General Motors Corporation could [fol. 100] be more promptly disposed of than subsequent conditions have indicated,' or 'that the aforesaid final order or decree could be procured on or before January 1, 1941,' or 'that the parties hereto, at the time of the entering of the consent decree, anticipated that (the) criminal case

would be disposed of without extensive and lengthy litigation,' or 'that by its results the issues in said civil suit would be substantially effected and settled' or 'simplified and shortened,' or 'that said criminal action unexpectedly developed many preliminary hearings and interlocutory matters,' as alleged in said motion. On the contrary, said motion shows upon its face, and upon the face of the decree, that no condition of mistake, surprise, inadvertence, or excusable neglect is sought to be corrected. These defendants allege that the parties discussed at length the period within which the plaintiff should procure an order or decree, that the possibilities of delay were canvassed in detail and that both parties gave their consent to the consent decree with full knowledge and without error. Edmond J. Ford, upon whose affidavit the plaintiffs' motion is made, was not present at the conferences or negotiations at which the parties determined the form of the consent decree entered herein.

"(3) Defendants allege that said motion is not timely. On the contrary, it is clear upon the face of the motion that plaintiff, long aware of the facts, such as they are, which it [fol. 101] asserts, has made its motion more than six months after the entry of the decree and at the last practicable moment before the expiration date of the provision of the decree sought to be extended.

"(4) Upon the face of the motion, and upon the records of this court in this cause, defendants allege that the intent of the parties and the language of the decree are clear and in accord, without inadvertence and of no uncertain intendment; that the requisites of mistake, inadvertence, surprise, or excusable neglect are not alleged and, on the contrary, are negatived on the face of the record; and that diligence on the part of plaintiff is not only not material but is conclusively negatived on the face of the record.

"Wherefore, defendants pray:

"(1) That said motion be dismissed forthwith; or

"(2) That, if said motion be not dismissed, plaintiff be required to plead or elect with particularity (a) whether it relies upon mistake, surprise, inadvertence, or excusable neglect (if so, setting forth with certainty the facts upon which such claim is made) or (b) whether it relies upon changed basic conditions of fact or law (if so, setting forth

with particularity such changed conditions); and that defendants, thereafter, be given sufficient notice and opportunity to prepare its response and defense; or

"(3) That, if said motion be not dismissed and if plain-[fol. 102] tiff is not required to plead further, the motion now filed herein be set down for hearing for the taking of proof on the merits, upon such terms and conditions as will assure defendants due notice of the issues and adequate opportunity to prepare its response or defense thereto.

"This motion is made upon all the records of this court in this cause.

"There is filed herewith a brief memorandum of points and authorities in support hereof."

Does that differ from the copy I have?

Mr. Kelley: Well, I don't think it does. This is for you; you keep that.

Mr. Ford: Now if your Honor please, the situation is this. We have a consent decree. That consent decree was a part and a result of long negotiations between the parties and of many peculiar and intricate circumstances. Certain indictments had been returned; certain discussions had followed. One point that was discussed by the parties was the legality of a manufacturer of automobiles in maintaining an associate finance company. In all the other provisions of this decree we have no difficulty. Our difficulty comes solely on the interpretation of this section 12.

Now, It may be that some technical points are to be raised, that some questions are coming up, as to just what the rule means, or as to just what has been said in cases that are not [fol. 103] clearly in point, but it seems to me that the best thing for us to do is to look at the whole situation from the point of view of reasonable men, all of whom are trying to establish a system for selling automobiles which is fair to all parties concerned, both the parties to this action and to all other parties, to parties who are involved or were involved in the same practices that are here mentioned and to consider what the situation will be when this decree is modified or when it is not modified and what the court should do.

Before I come to that let me say that the court has reserved full jurisdiction in section 14 for amending this decree in any method whatsoever. Now, I think that it is just as clear that the court has that authority to amend this as justice requires when the provision is set out in section

14 as if those provisions had been set out directly in this section 12; that is, if section 12 said the court may, when justice requires, or similar words, amend this decree.

Now As I have said a moment ago, there was the vital question as to whether or not General Motors, which owned GMAC, would be obliged to give up their company, and that was a question of law and fact on which the negotiators for this consent decree could not reach conclusions. So they decided that the Government, who insisted that the corporation manufacturing automobiles had no right to maintain [fol. 104] its finance company, to own its finance company, that the Government would take adequate means for determining that question of law.

At that time there was an indictment pending against General Motors Corporation, and the case was one which would involve a considerable time and trouble. All persons understood that. There was no question but that when it came to trial it would be a long case. General Motors had voluntarily come in and pleaded. They had shown up to that time the same attitude that the defendants had shown, that the law was not with the contention of the Government. It, therefore, was in the minds of all persons that the law on this particular point must be settled in some test case.

This was not simply a matter of what Chrysler Corporation was to do on a specific day in regard to making one specific sale or making one specific loan. It was a question which involved the entire automobile industry for all times and millions and perhaps billions of dollars. It was a practice which would extend to the daily life of millions and millions of people in the United States and to the daily life and trade practices of fifteen thousand or more dealers for each of the three companies. So that we should look at the substance of what the parties were driving at. And why I point this out to your Honor is because I want to make it clear that what the parties were looking at was the settling of an [fol. 105] issue of law by some case. It didn't make any difference whether it was a civil case or whether it was a criminal case. We wanted to settle that principle of law.

Now we didn't want to harrass anybody. There was a fair dispute on the matter. Both sides realized the reasonableness of the claim of the other, but it was for the court to decide. All right. So we say the substance of what this section 12 applies to was—the substance of it—has the corporation, a manufacturing corporation, the right to own a

finance company. That question was up in the criminal case.

Now It is perfectly true that the civil case was not commenced immediately, but in this consent decree a statement was put in that any charge made to the jury by the trial judge in the General Motors case in regard to any issue would be considered as the law, so that reasonably all anticipated that in the trial of this criminal case the charge to the jury would set out what the attitude of the court was on that principle of law, and all parties, or at least the defendant, would have the right of appeal. But as the case was tried and as it went along, in the sound discretion of the judge he felt that that was not an issue which should be brought in at that time to confuse the jury, when there were other issues on which the case might more readily and more fairly be tried. And that disposed of the treating of that question of law and the disposing of it in that way.

[fol. 106] Now, had the matter gone through in the method that the consent decree had anticipated by that clause, the charge in that case, when finally sustained by the Circuit Court or by the Supreme Court, would immediately be the basis of law for a civil action. That, however, did not work out in that method.

Now, before I come to the matter of the expediency and the care of the Government in prosecuting this case let me once again turn to the question which is here involved, which, I think perhaps, should be most clearly—in which I think our position should be most clearly pointed out to the court. We are now in equity. Equity deals with substance rather than with form. Equity does not regard time as of the essence. This section 12 was not put in as a gambling proposition. The parties did not intend to gamble and say to the Government, "Well, if you don't get this thing through by the 1st of January, 1941, then we want to again have a finance company." Nobody had that intention at all. Our intention was to settle this case. It went to the substance. The decree didn't say that time is of the essence; it simply mentioned a date.

We say that this paragraph then is considered from two points of view. First, from the substance, from the matter of law which the parties desired to have settled; second, from the insertion of a date.

[fol. 107] Now, those two at the present time are inconsistent. The case has not been disposed of. The date

is about to arrive. We say the court must choose between the two. It must choose between interpreting that as saying that the date is the important thing or as saying that the substance is the important thing, and we claim that the substance is the important thing.

Now, in answer to this argument the defendants will say, well, the Government was careless, negligent, not expeditious in forcing this suit, and I think I can address myself to that, citing matters which are within the knowledge of the court. We attempted immediately to have a trial on this case. A demurrer was filed. Your Honor heard the demurrer. The case, I think, was reasonably well argued. Briefs were submitted, both before the trial, before the hearing, and after the hearing, and, unless I am mistaken, reply briefs were submitted. The case was given careful attention and a decision was made. That proceeded for several months. I have the dates here; I don't exactly recall when it was. We certainly could not criticise General Motors for their speed in the presenting of their facts. They presented briefs that were credible. We did the best we could on presenting our briefs quickly. We never asked for a moment's delay in any proceeding. Our attitude has been always to hurry the matter along. Finally there was a decision.

[fol. 108] Now the affidavit says that there was nothing unusual after that time. Well, I think there was, because the justice who ordinarily would try the case decided that he couldn't try that particular issue on account of having heard this, and that made it necessary for the assignment of some other judge. That involved new proceedings, because we had to go to the presiding judge to get an assignment. And the district was busy, it was difficult to get a judge. Finally we did get Judge Lindley assigned and he acted very promptly; said that all motions must be in by May 1st of last year, and all motions were in, and he set them down for hearing on May the 1st of that year. The demurrer was opened up again. There was a motion for a bill of particulars. I think there was a motion to quash. There was at some time, I don't know whether it was then, a motion to discontinue against some defendant. And these all required briefs and reply briefs. Finally the decision was made.

Now that decision came some time in June or July. A hearing was held before Judge Lindley as to whether the

case would be tried in the summor not. We were ready to go to trial, and anxious to go to trial at that time, but with better judgment the court decided that during the summer time it would not be a proper time and he would not sit for that trial. So the case went over to the first opportunity in October. It was then tried, starting, I think, on the 3rd [fol. 109] or 6th of October and closing on the 17th of November.

During that time there was not a single moment when we didn't have a witness to go on the stand, and there wasn't a moment's delay. General motors twice asked for a continuance of about twenty minutes before adjourning time because, as they said, they had witnesses whose time on the stand would extend for a long time and they thought it better not to start them at that late hour in the afternoon.

The case went through to a conclusion in November. The testimony covered five thousand six hundred pages, twenty-one volumes. An appeal was taken. The documents in the case, the exhibits in the case, covered thousands and thousands of pages, I don't know how many. I know that after they were reduced to the lowest possible form they took up over three volumes, either three or four volumes, which have about five hundred pages of printed matter, and that is reducing them by probably two-thirds to seventy-five percent.

Now, all that reduction, the preparing of that record, took time. It required conferences between General Motors and the Department of Justice. It took all the time that we could give. We have only a limited personnel; we worked late at night. General Motors did the same thing. They had an extra staff of men working on that case, and I insert here that it seemed to us, and it seems to me now, hardly fair to General Motors on a dispute of a question of law, [fol. 110] where each party has reasonable authority to support it, to say to them, while the Department of Justice is working this thing out with you another branch of men, taking all your time and all the time of your staff, another branch of men must work out with you on a civil case and try a civil case on substantially the same facts that have been tried before, and both parties must be working at the same time, when all that we are looking for is a decision of that issue of law which is the same decision that is here.

Now, it may be that that is not in accordance with the idea of the defendants, but I think I can frankly and positively

say that any defendant that we proceeded against with two proceedings at the same time with the same issue involved, might rightly come to the court and ask that one case be continued until the other was disposed of.

Now, then, after we had our record ready, and that took some time, it took several months, and I assure you that it was steady work, it wasn't any delay, then we had the matter of drawing briefs. We asked no extension of time for any of our briefs. According to my recollection, and I think I am right, General Motors did, but they were entitled to that. They had complicated matters to present and we agreed to it. The briefs came in in September.

Now, the assignments of error of General Motors in that case were very lengthy, and until those came in we didn't [fol. 111] know what issues they were going to take to the Seventh Circuit, but their brief came in late in August or September. After studying that and looking it over we found that we were not satisfied that all of the issues in the two cases would be disposed of in the Seventh Circuit. However, there was one point, namely, the point of the amalgamation of these corporations and the association with the corporation, which is the point which is primarily, if not primarily at least in a very heavy degree, to determine the outcome of this case.

I might just in explaining that say this, that General Motors claims that where a manufacturer has associated with it a finance company, that that is all one joint enterprise and that insomuch as the two are not competitors that they can not restrain trade. The idea is that the stockholders of the one corporation own the stock of the other corporation. The entity is the stockholders and there can be no conspiracy and they are a joint enterprise. We claim that is not so.

Now, the briefs in these cases have been direct primary briefs, reply briefs and rebuttal briefs, and we have just received now—the day before I came out here I received the last of their reply briefs. We have a brief to file in rebuttal and this case is set down in the Seventh Circuit for the 17th of January, at which time——

[fol. 112] The Court: This is the equity suit?

Mr. Ford: No, the equity suit has—this is the criminal case now. The equity case has not been tried at all, and I am going to come to that now in just a moment, as to what we expect to happen in this equity case.

The Court: Has the criminal case been argued before the Circuit Court?

Mr. Ford: No, it is coming up on the 17th of January for argument. That has been assigned recently, within the last—I think within the last few days. I just got word on it a day or two ago. So we have a brief to write and then we will go to hearing on that. So that should be disposed of promptly in the Circuit Court.

Now, the issues in the civil case, the complaint in the civil case is repeated—repeats in part and in its chief part word for word the allegations of the indictment. I mention that because counsel here say that the issues in the two cases are not the same. So that an ajudication of facts in the criminal case will be res adjudicata in the civil case and we will have to present very little evidence in that case.

Now, this means a tremendous saving to both parties, and, in my opinion, it means that on the whole the case will be disposed of much more quickly than it would have been otherwise disposed of. Not only that, but the rulings of law [fol. 113] in that case will be of such nature that when that case is disposed of I believe that the parties in this case will understand pretty nearly exactly what their rights are, and I don't think that either party is looking for any extensive litigation if the matter can be disposed of fairly and in accordance with the law.

Now, the defendants have given me a copy of a document which they have filed, which I think is fairly exact, although this was taken over the telephone yesterday. Mr. Stanley gave me this; I got it at his office yesterday afternoon just before I left. I want very briefly to point out——

The Court: What is it, Mr. Ford?

Mr. Ford: This was the paper which I read in the first instance.

The Court: Oh, yes; their answer.

Mr. Ford: Yes, sir; only this is a copy which I procured from Mr. Stanley, who very kindly gave it to me yesterday although he said he received it over the phone and it may not be accurate, but as far as it is accurate, I just received this other one with the brief shortly before I came into court and haven't had an opportunity of reading either of those papers with care, but have marked this so that it is more easy for me to take this paper if I may.

Next as to the first paragraph, the defendants there deny that the plaintiff has expeditiously taken and pursued all

[fol. 114] courses necessary and proper for procuring an order or decree against General Motors Corporation requiring it to divest and so forth. Well, I have already covered that. I have shown why we haven't tried this civil case. I believe that the civil case will be disposed of largely by the decision in this criminal case, and I think any person looking over the pleadings will reach the same conclusion. At least we will save a great deal of time and make it much easier for the trial court, for the judgment. The determination of fact in that case will be a determination of fact in this case, and I don't see how the court can avoid going into the issue of the relationship between the finance company and the manufacturer in such case and setting down some rule for the guidance of a trial court.

Then the second thing,the issues which would be involved in a case resulting in such final order or decree, that is, the order or decree against General Motors, have been to a great extent and are involved in the criminal case in this court. Now these defendants deny that the issues are the same, but an inspection of the complaint and of the indictment, the complaint against General Motors and the indictment against General Motors, will show identical, that the paragraphs marked with letters in the complaint and the paragraphs numbered 35 to 55 in the indictment are exactly the same word for word, so that the facts involved are the [fol. 115] same in the two cases, and the question of law also is the same.

Now, they deny that the said criminal action unexpectedly developed many preliminary hearings and interlocutory matters. Well, it involved interlocutory matters which were unusual, and I think which were many too. The importance of an interlocutory matter is not always set by the number of documents filed but by the substance of them. There were competent counsel in the General Motors case who covered their case fully, raising many points. There were many briefs, and if we may consider the filing of briefs in the same category as the filing of motions, which we may fairly in equity, certainly there were many of them. In addition to that it was necessary to have a special justice assigned to try the case under the statute, and that is not always an easy thing to do. Other cases must go on; judges have the business of their own district to take care of. The presiding judge has some trouble sometimes and some delay follows on that, which is a matter that is entirely justifiable.

Then in the matter of the other things of which we were accused of delaying, I think I have already covered. As I have said, we have never asked for a continuance of this case at any time. I don't think there is a single time when we have asked for a continuance, and we have always tried to force things ahead. When General Motors have asked for [fol. 116] a continuance it has been on what we considered the best possible reason, when the court would give it to them if we didn't, and where the continuance has been for a very short period indeed.

They deny here that the issues will be disposed of in the criminal case. I think that I have already covered that.

Now, they say that the civil proceedings were not instituted until October 4th, 1940. That is true. But that is of no harm to the defendants in this case, because the issues that are involved were at all times active, they were at all times being considered in the criminal case. So that it didn't make any difference when we started that suit; the suit would doubtless have been continued until the criminal case was disposed of. I don't see how it would have been possible for us in the antitrust division; with our limited personnel, or for General Motors who had chief counsel and all their regular counsel and employed outside counsel also perpetually engaged in this case, to have disposed of a civil case at the same time with fairness to themselves or with fairness to the court.

The Court: Where is this case pending, the civil case?

Mr. Ford: The civil case is pending in Chicago.

The Court: District court in Chicago?

Mr. Ford: Yes, sir.

The Court: The bill has simply been filed and nothing done?

[fol. 117] Mr. Ford: Nothing has been done, that's right, your Honor.

The Court: Has it been abated?

Mr. Ford: No.

The Court: Has it been stayed?

Mr. Ford: No, sir.

The Court: To await the decision in the criminal case?

Mr. Ford: No, sir; it has not, sir.

The Court: No showing in that regard?

Mr. Ford: No, because we haven't felt any tendency to force that case while this is pending, as I have already pointed out.

The Court: And the defendant is not urging the trial?

Mr. Ford: No, I haven't talked with the defendant on that, but Mr. Baldridge has talked with them, and I think they have called his attention to the fact that counsel are busy on this other case and they would like that case delayed until a disposition of this.

The Court: That is the disposition of both parties, is it?

Mr. Ford: Yes, sir, I should say that is.

The Court: To await trial in that case until the criminal case has been finally disposed of?

Mr. Ford: I should say that is the present disposition of the parties, which we consider fair. And that case will be disposed of just as soon as we can possibly dispose of it.

The Court: Of course you can't dispose of the criminal [fol. 118] case until the court of appeals brings in its decision.

Mr. Ford: No, sir. They weren't sitting in December. They didn't assign any cases for December, but if it were, why, they could have shortened the time for the briefs and we would have been ready. But they assigned it for the first opportunity in January. January 17th is the present assignment, and I don't think there is any question at all of any continuance. I think the case will be heard on that date. We are ready. We have a brief to prepare but we have made arrangements for that and we will have it prepared.

The Court: I suppose there are questions in that case that might go to the Supreme Court.

Mr. Ford: Yes, sir, I think there are. If the Supreme Court grants certiorari, I think——

The Court: Yes.

Mr. Ford: The case, of course, involves a great deal of money, as these cases do. A great many people are involved and a great deal of money is involved.

The Court: The individual defendants in that case were found not guilty, were they not?

Mr. Ford: Yes, sir; that's right. The four corporations were found guilty; the individual defendants were found not guilty.

The Court: Well, it is apparent that the appeal in that case is not because of the fines assessed but to settle some [fol. 119] questions of law. I suppose the defendants, the three or four corporations, would be delighted to pay the amount of the fines assessed. They were five thousand dollars, weren't they?

Mr. Ford: Yes, sir; five thousand dollars for each defendant with costs.

The Court: But they are litigating out a principle there.

Mr. Ford: Yes, sir. That is what the case is about, is a matter of a principle, and everybody has that idea of it and has had that idea from the first.

Now, I know that sometimes we are accused of harrassing parties, but there is no intention at all of that. As a matter of fact, always in these cases we have entirely a different point of view.

Now, the parties may say, well, you could have filed this suit against General Motors, this civil suit, sooner. I have already answered that in one respect. We could have filed it sooner. We had bills to file it sooner and drew them on different propositions, but it seemed better to wait until we found out just what was the issue that had to be settled on these matters before we selected the various methods by which we were to proceed, and we are proceeding just on this issue on which these gentlemen here are involved. As a matter of fact, General Motors is paying the expenses of settling that issue, which is going to be of advantage when settled to Chrysler and Ford just as much as it is to Gen-
[fol. 120] eral Motors. Our attitude is in every way that we possibly can to cooperate with this proposition, but there is a statute. We consider that things are being done here against that statute and we must settle that as soon as we can.

I just want to call your attention to one other thing, if your Honor please. I don't want to take too much time here, but I have already mentioned the personnel that is working on this case, both for General Motors and for us. We have a very limited personnel. We have at the present time over thirty-three hundred persons indicted for criminal offenses, and we have many others against whom civil proceedings are pending. In addition to that we have thousands and thousands of complaints, to every one of which we give the most careful attention. These men come before the court but they are given the most careful attention. Now, we have a very limited personnel, very few men that we can get to come into the Department of Justice on the inducement that we give them and take care of these matters in a careful and competent way, which balances the rights of all persons and does not become arbi-

trary but is of assistance in straightening out propositions just like this. But I think it would be very unfortunate for General Motors and very unfair to them to require them at any time to defend these two cases at the same time, because the issues are the same, and, after all, as I have said, it is only the issues which we desire to dispose of. [fol. 121] I have been longer than I intended.

The Court: Will you read again the first clause in the consent decree?

Mr. Ford: Yes, in the consent decree?

The Court: I didn't quite follow that. I remember these decrees and there was something in the decree—I remember we smiled about it at the time—providing that if there was a conviction certain things would happen.

Mr. Ford: Yes, sir.

The Court: Putting a premium, it seems to me, on getting a conviction. That is out of this, is it?

Mr. Ford: That is not involved in this. That is a separate provision, that's right.

The Court: I don't remember this provision.

Mr. Ford: This was a minor provision. This was something that was not given the careful attention that the other things were given. It seemed to be something a little bit aside from it. The provision which you have in mind was this, that if General Motors were acquitted, then this whole thing was thrown out with the exception of the one clause which said that if they were acquitted that this decree would become null and void, and that was the consent decree.

The Court: If they were convicted it would stay——

Mr. Ford: If they were convicted, yes.

The Court: That was one reason why I thought I couldn't [fol. 122] try the case. I remember that particularly as impressing me very strongly at the time. Now, what is this provision?

Mr. Ford: I will read the whole of section 12. It is only the second paragraph that applies, but I think to understand the second paragraph perhaps I should read the first.

"The respondent finance company shall not pay to any automobile manufacturing company and the manufacturer shall not obtain from any finance company any money or other thing of value as a bonus or commission on account of retail time sales paper acquired by the finance company

from dealers of the manufacturer. The manufacturer shall not make any loan to or purchase the securities of respondent finance company or any finance company or any other finance company with the purpose or effect of inducing or enabling such finance company to offer to the dealers of the manufacturer a lower finance charge that it would offer in the absence of such payment, it shall offer in writing to make, and if such offer is accepted it shall make, payment upon substantially similar bases, terms and conditions to every other finance company offering such lower finance charge; provided, however, that nothing in this paragraph contained shall be construed to prohibit the manufacturer from acquiring notes, bonds, commercial paper, or other evidence of indebtedness of respondent finance company or any other finance company in the open market."

[fol. 123] Then comes the second paragraph which is the important paragraph.

The Court: That first paragraph has been in effect a long time?

Mr. Ford: Yes, that is in effect.

"It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a."

12a was the registration paragraph.

The Court: As I understand that as you read it now, the defendants are enjoined from doing certain things.

Mr. Ford: Yes, sir.

The Court: Between the manufacturing company and the finance company.

[fol. 124] Mr. Ford: Yes, sir.

The Court: And they stopped doing that, they agreed by this consent decree to stop doing that. Then there is a

provision that unless you stop General Motors from doing the same thing by January 1st, 1941, then that clause is out too?

Mr. Ford: Yes, sir; that's right.

The Court: They may then resume their practice.

Mr. Ford: That's right.

The Court: Former practice.

Mr. Ford: That is exactly it. That is our understanding of it. Now, there are provisions in here with regard to the charge to the jury which I should mention, that, as I say, would dispose of that issue, but doesn't dispose of it, and that was a matter of the charge to the jury.

The Court: That is, you were going to accept the court's charge to the jury in the criminal case in any appeal court as the law applicable in these consent decree cases?

Mr. Ford: Yes, sir; that's right. I don't just recall that provision, but that provision is here in the consent decree.

Mr. Kelley: It doesn't apply to that section at all, if your Honor please.

Mr. Ford: Well, that is a matter of the interpretation then. Let's find that provision. I have it marked here in one of these.

[fol. 125] The Court: Well, you said in your statement, Mr. Ford, that Judge Lindley thought that it was not necessary on this particular issue, so that that would be out anyway.

Mr. Ford: Yes, sir.

Mr. Kelley: Your Honor, Judge Lindley instructed the jury, and a sentence in the charge appears in the record on appeal in which he exactly instructed the jury that mere ownership by General Motors Corporation of General Motors Acceptance Corporation was not in itself criminal.

Mr. Ford: Well, I don't recall that.

Mr. Kelley: Well, it is in there. I just read it.

Mr. Ford: If that is there it is because the issue of the case was on other lines and not on that particular line, and because Judge Lindley was limiting the issues to the jury, making it clear. I have a copy of the charge here if your Honor would like to see it.

The Court: Well, of course the defendants were being tried on the charges in the indictment, and I can see where the Judge would say the mere ownership is not a crime. They must go further and prove that that ownership or the

relation was in restraint of trade, unlawful restraint of trade.

Mr. Kelley: But only the ownership by us is covered by this paragraph, you see.

Mr. Ford: If your Honor please, our understanding of that—there is this in the case which must be considered, two [fol. 126] things which must be considered. In the first place, every time there is an association between an automobile manufacturer and a finance company we have evidence that there are practices that we consider wrongful in the nature of coercion and discrimination and what we call bribery, what they call distribution of reserve.

Now, that is one thing, and another thing, and I think that counsel will agree with me, there is a feeling throughout the automobile industry that the mere fact that a finance company is associated with an automobile manufacturer is in the mind of the dealer so that he feels that he must conform to the orders both of the manufacturer and of the finance company. Now, I don't ask counsel to take that as true, but I do say that we have some evidence to indicate that.

Mr. Kelley: Even the Department of Justice doesn't say it is true, because Packard and Hudson and other smaller companies had contracts with the Commercial Credit Company very similar to the contract that Chrysler had, and we asked the Government, what are you going to do about them, and they said——

Mr. Ford: Now, Mr. Kelley, just a moment on that. I don't know anything about Hudson; that's the first I heard, but I think you know when we were at Milwaukee there was an advertisement put in the peper—I think you recall this—an advertisement put in the paper by Packard on account [fol. 127] of its association, and a letter—and Packard was summoned and a letter was brought in and that practice was discontinued at that time. I think you recall that.

Now, we aren't playing any favorites here. I want to assure your Honor of that. Sometimes these cases do run into a little hard feeling temporarily, but we are not playing any favorites, we are treating everybody the same, and when this thing is through we don't want the Chrysler Corporation to come along and say, as they can perhaps under one provision here, well, we are doing this thing because the consent decree gives us the power to do it. After we have gone out and made General Motors discontinue

that relationship with GMAC, we don't want that. It is entirely unfair, it isn't equitable, and apart from any agreement between counsel, even if they came here and said we agreed to it, even if we both agreed to it, I feel that it still is the duty of the court to say, well, that thing can not go on regardless of the agreement of parties, and I don't think that any technicality should stand in the way of equity's doing the fair thing there, because if this motion is not granted it only means perpetual litigation and the industry will not ever be straightened out until either the antitrust laws are repealed or until they conform to the antitrust laws as interpreted by the court.

ARGUMENT ON BEHALF OF DEFENDANTS

Mr. Kelley: If the Court please, when I heard my friend, Mr. Ford, make the address that he has just made it reminds [fol. 128] me of once being with the late Albert Strauss, vice-governor of the Federal Reserve Board. We were listening to a foreign diplomat making an address in the council of foreign relations, and when he finished Mr. Strauss touched me on the knee and he said, "I never knew there was such a good intention." I think his description of how we are all sitting by trying to just get a point of law decided reminds me of the Shakespearean description where one of the characters says, "Oh, Bottom, how art thou translated." I would never recognize from Mr. Ford's description the negotiation that we had.

Now, I looked over preparatory to coming here the proceedings on the 7th of November, 1938, before your Honor when we presented to your Honor the draft of the final decree to which the parties consented in the case in which my clients are a party. You may recall that we came here and that there was some opposition by outside finance companies to the entry of a decree by consent and that we were here an afternoon discussing it and your Honor took the draft of the decree and then we all came back a week later, and after having considered it your Honor decided to enter the decree by consent.

Now, in those proceedings I refresh my mind that I took the liberty of telling your Honor that we had had a long and painful negotiation reaching that decree, and it was a long and a very painful negotiation. It began, I think it would be, about in October of 1937, and then we were indicted in

[fol. 129] Milwaukee, and the late Judge Geiger finally threw all the proceedings out. And then——

Mr. Ford: We didn't get quite that far in Milwaukee.

The Court: The indictment was never returned. You were investigated before the grand jury.

Mr. Kelley: Well, the Judge threw them all out. Then we began, I believe, the next April talking to the Department again.

The Court: Well, you were trying to dissuade them from prosecuting you.

Mr. Kelley: We were indeed, sir. And one of those things that happened shows the painfulness of this kind of thing. I remember on Monday or Tuesday we were told in the Department that the indictment would not be down for ten days or two weeks. We were given quite an assurance on that. It just happened that on the Thursday night following, between Thursday night and Friday morning, Mr. Chrysler was stricken. He never was able to do business again; became incapacitated. We couldn't even talk to him about the case, but that same Friday that we learned of his being stricken, and only four days after that assurance, down came the indictment.

Now, similarly in this thing, here at the last minute we are haled out here. We don't even get the ordinary notice, but it is shortened up by an appeal to your Honor, who didn't really have the facts before you, and the notice is [fol. 130] given in an informal way and we are all doing the best we can on short notice here. But the real thing in issue is that this was a seriously negotiated document.

Now, in some of the earlier negotiations Mr. Ford was present but later, after he was out here engaged in obtaining an indictment and so forth, the negotiations took a different turn in the summer, and from there on he was not present at those negotiations. The negotiations took a turn—it didn't come in, I think, until the early part of July—in which we asked the Department this. The Department had been saying right along that they did not mean to put anybody at a competitive disadvantage by these proceedings. Therefore, we said to the Department, are you willing to say that if you do not prevent General Motors Corporation, who was not talking about a consent decree but who is litigating with you, that if by that litigation or some other litigation you do not prevent them from doing certain things, are we to be bound forever by signing this decree,

or will you make the decree in such a form that to the extent that you do not get prohibitions against General Motors we shall be let out. And as I understood the Department, they said, there are certain things that we don't think anybody ought to do, but if we don't prevail against General Motors you can be let out.

Now, a most important element in this case was this. General Motors Acceptance Corporation is a very large [fol. 131] concern, a very profitable concern. Of course, no matter by what method a motor company makes profits, it can reduce the prices of its products and thus have added strength in competing. Now, General Motors, as we understand it, had been doing a very profitable business through its finance company, and is doing a very profitable business today. As I drove into Hammond coming to this hearing I saw a big sign of General Motors Acceptance Corporation, advertising their financing service.

Now, in our negotiations it was one of the critical parts of it, it was not a subsidiary part as Mr. Ford seems to indicate here, it was a critical part. We say, all right, you say we can't have any relation with a finance company. How long are you going to say that we can't offer our customers any finance service while General Motors is going on, offering its customers finance service, making a great deal of money out of it and being able to reduce the prices of its cars in competition with ours out of those profits?

The Court: Were you connected with or did you own a finance company at that time?

Mr. Kelley: No, your Honor. At the time that we were indicted, instead of owning the service, as General Motors did, we bought it from Commercial Credit Company. We made a contract for it with Commercial Credit.

The Court: I was wondering if you gave up anything.

[fol. 132] Mr. Kelley: Yes, sir. We bought that service.

The Court: What did you give up?

Mr. Kelley: We bought that service from Commercial Credit Company.

The Court: You bought the service?

Mr. Kelley: Yes, sir; and we had a contract under which if the Commercial Credit Company made a certain amount of profit out of their dealings with us, they shared part of that with us, and as part of this arrangement we cancelled that contract. That contract was one of the things that was alleged as the basis of the indictment.

The Court: It has been cancelled ever since?

Mr. Kelley: It has.

The Court: Now, you are complaining because you don't want the cancellation to continue, you want to go back into that field, is that it?

Mr. Kelley: What it says here, we can have a finance company of our own, or do something like that.

The Court: I know.

Mr. Kelley: We want to be able to if General Motors is able to.

The Court: Well, do you want to go back, do you propose to, or do you just want to be able to? Are you fighting for your rights as a principle or are you being injured financially?

[fol. 133] Mr. Kelley: At this moment we are fighting for our rights as a principle because we have at this time no plans, but, as your Honor knows, things move in the automobile business very rapidly.

The Court: It don't seem to me that we ought to consider very much just a matter of principle here. Eventually, of course, that question will have to be settled, but if you are not being injured I can't see where there would be any great harm to you to continue this for another period of a year or so.

Mr. Kelley: Because we are at a great competitive disadvantage.

The Court: You say not. You say you are fighting it as a matter of principle, as a matter of right.

Mr. Kelley: Because we haven't been able to make any plans up to now. It isn't until the 1st of January, which has not yet arrived, that we could legally even contemplate it, because we are now under the injunction of this decree which we have honestly and thoroughly performed. There is no question about that. Mr. Ford wouldn't raise any question about that.

The Court: That is not challenged.

Mr. Kelley: Now, if your Honor please, Mr. Ford—well, first I say that this was a very carefully negotiated thing. It was discussed. We first suggested that the period be twelve months and the Department said they couldn't do it [fol. 134] in twelve months, and we said we didn't think we should be under a competitive disadvantage longer than twelve months, and after a great deal of negotiation the period was fixed at January 1, 1941, a little over two years,

and I know that my client considered most carefully whether it could stand that competitive disadvantage for two years, and they said, yes, they would do that.

Now, Mr. Ford comes in, and if you take his two suggestions together he isn't asking merely for another year, but he is asking in effect that we be kept at this competitive disadvantage until the Government and General Motors complete their litigation.

The Court: Of course he is asking—perhaps he might not get everything he is asking. He is asking, just like when you file a complaint you ask for everything. Now, is he entitled to any part of what he is asking for?

Mr. Kelley: I think, if your Honor please, that when the Government and the defendants make a consent decree, and I think that the authorities are with me on that, that it is a serious thing, and that one party just because it finds it would be beneficial to be free of some part of that consent decree comes in and says, well, I don't like that decree very well, there are other things I would like to do and it would be quite nice for me to be free of it, that he can just come in and ask to be free of it, and the court on a motion, on [fol. 135] short notice of four days, say, all right, you can be free of that. If that is what consent decrees mean it will be a very different jurisprudence.

What I am saying is this, that this provision never was intended to keep us at this competitive disadvantage indefinitely while the General Motors litigation was going on.

Mr. Ford shows how, and I think most incorrectly, how diligent they have been and he shows how General Motors in response to your Honor's inquiry is not pressing the civil case. Why should General Motors press the civil case?

The Court: I thought that myself.

Mr. Kelley: Why should they press the criminal case? Why, as long as we, who are their second competitor—their first competitor I should say, the second producer of automobiles in the industry, while we have our hands tied behind our back on the financing? Why should they be in a hurry?

The Court: Why, of course not. They don't want a judgment rendered against them until the case comes to trial, that's a cinch. There is no question about that, but, gentlemen, now, it does seem to me that there is some equity in this request to this extent. Right or wrong, I don't know, I have always had my fingers crossed when these consent

decrees are entered into, but nevertheless it was put up to me and we went through with it. Now, you have operated, you have made this much profit. Now, wouldn't it be profi-
[fol. 136] gate to just cast that all aside? Won't it be better for all concerned if there can be some way devised not to injure you people while this litigation against General Motors is going on?

Mr. Kelley: We are being injured every day, your Honor.

The Court: Well, I don't believe that Mr. Ford would claim that that ought to be. Now, is there any way to iron it out in some other way?

Mr. Kelley: I don't know. We spent from July to November arguing it out with the gentlemen in the Department. It is very interesting to me that those gentlemen with whom we did argue it out did not any of them take the responsibility of signing these papers and being here.

Mr. Ford: Mr. Arnold was there.

Mr. Kelley: Mr. Arnold was there.

Mr. Ford: Mr. Arnold was there, but did he take part?

Mr. Kelley: Indeed he did, sir.

Mr. Ford: I didn't know that.

Mr. Kelley: Indeed he did.

Mr. Ford: Mr. Abt was the one——

Mr. Kelley: Mr. Arnold we had a conference with, and Mr. Arnold came to this court to argue for the entry of the consent decree.

Mr. Ford: Mr. Baldridge was here, but Mr. Baldridge had just come to the department.

Mr. Kelley: But Mr. Arnold was here too.

[fol. 137] The Court: Mr. Arnold was here when the consent decrees were presented.

Mr. Kelley: Indeed.

Mr. Ford: Mr. Abt is the one, I think. Mr. Abt is no longer with the Department, and Mr. Hardy.

The Court: I think I met him.

Mr. Ford: Yes, he was here before the grand jury, and those gentlemen are no longer in the Department.

Mr. Kelley: Your Honor please, there is another aspect to this case that Mr. Ford has not mentioned, which I think is of high importance. As Judge Lindley said in his charge, ownership by General Motors Corporation of the General Motors Acceptance Corporation was not in itself criminal. Now, if for any reason the court of equity after some number of years, and you will see from the handbook

of the Department of Justice and the antitrust cases that it is not unusual for them to go ten or twelve years, a number of them sixteen years——

Mr. Ford: Not recently, Mr. Kelley.

Mr. Kelley: But there is plenty of that in the history.

The Court: Courts are becoming current, you know.

Mr. Kelley: Yes. Well, it was common up to four or five years ago.

The Court: The Supreme Court has made us all current.

Mr. Ford: Well, we do the best we can, the same as the courts do.

Mr. Kelley: But, if the Court please, suppose that at the [fol. 138] end of some number of years, and Mr. Ford, I don't think, will deny that the years will at least be plural, he is asking here, protecting himself on that very subject, but suppose the court rules that General Motors is not entitled in the particular circumstances to continue to own the Acceptance Company's stock. Now, that won't be because ownership in and of itself would be illegal. I think Judge Lindley was clearly right in his charge. That would be one of those protective measures where because a defendant has abused a legal right the court of equity builds a fence. Mr. Arnold told us a great deal about this in those negotiations, and said, if you had not abused the particular right you could have gone on exercising it, but if you have abused that right you can not exercise it.

You will notice in our decree here there is a provision in article 18 that after four years from the date of entry of the decree any respondent may apply to the court for relief. Now, we have been under injunction for over two years.

The Court: That is because you consented to it though.

Mr. Kelley: Well, we did, but the fact is——

The Court: The point I am making is, you can't blame this court because you came in and consented.

Mr. Kelley: I am not blaiming the court.

The Court: All right.

Mr. Kelley: But I am trying to present a principle here [fol. 139] that I think has more importance.

The Court: All right.

Mr. Kelley: Mr. Arnold said, all right when you have been doing something that we think is wrong you have to be stopped for some period so that the habits that have been built up are destroyed. Now, what I say is, we have been under injunction for a couple of years; those habits have

been broken. Our dealers are not using those arrangements, so that if—it might well be that although General Motors would be enjoined because of what they had done that at the end of an injunction period we ought not to be enjoined, and it doesn't follow at all. Now, these two years having elapsed that was the reason for there being a period here and our consenting to it, and Mr. Ford's idea that this will settle the point of law is not correct at all, because the reasons for enjoining General Motors would be very different from the reasons that would be at stake in our case, where all those relations have been cut and we would start afresh and would have the right to proceed with a finance company, as your Honor will notice under the terms of this paragraph 12. Otherwise in accordance with this decree. That is, there are a lot of things that, starting afresh, we could not do that we used to do. But in the meantime, a period of being penned up, I think the thing is very different, and I don't think the argument that Mr. Ford makes holds water at all.

[fol. 140] The Court: Which argument?

Mr. Kelley: His argument that what they settle at the end of longer or shorter litigation with General Motors, whether they can have a finance company, determines whether we could have a finance company or not.

The Court: I think the question of law might be settled. However, I can see now the inequity of holding you fast and letting General Motors run in competition. Now, isn't there some way here that Mr. Ford can get what he is asking for without hurting you?

Mr. Kelley: Well, as long as we are hurt—we agreed to stand two years of disadvantage.

The Court: All right. Now, then, you want him to turn you loose and go right back into the old practices.

Mr. Kelley: Meantime we are under all the other terms of the consent decree, so we couldn't go back to the old practices.

The Court: The old practices with reference to your close relations between the manufacturing corporation and the finance company is the only one he is complaining about.

Mr. Kelley: Here is the thing, which by the consent of the Government with all the formality of a consent decree, whatever that may be——

The Court: I don't know.

Mr. Kelley: It may be they are a one-way street, and that [fol. 141] a respondent can't get any relief and the Government can, although the Supreme Court hasn't held that way. They held back in the Harvester Company case where the Government came in under a consent decree to get some additional relief, the Supreme Court turned them down. They said they were bound by their agreement. Similarly in the packers' case. The packers wanted some relief after the decree had run some time and the Supreme Court turned them down, and said that the best place for you to be is where you consented to be, and they left them there. Now, what we say is that we are entitled to be in a place now where the Government consented to have us, and this is that place.

The Court: They want you to stay there——

Mr. Kelley: Now.

The Court: —until the other case is decided.

Mr. Kelley: Here is what the Government says, that it is an express condition of this decree unless your Honor does something again to tie us down we are free. It isn't that we are asking to get free; it is Mr. Ford says that in about ten days we will be entitled to be free, and he doesn't want to stick to what his department agreed to.

The Court: What would be the effect of that? Let's talk about this as a practical matter now. Suppose this decree ends as you say and you are free, is it proposed by the Chrysler Company to set up a finance company?

[fol. 142] Mr. Kelley: I don't know that it is on this 21st day of December, but they would have a right. After the 1st of January they have a right.

The Court: All right. Now, suppose they did do that. Suppose we allowed them to be free and they set it up with a considerable expense, I take it, and a great deal of formality, and they get running in a period of six months or eight months or a year, and then this decree comes along and General Motors is convicted, the conviction stands and they are enjoined. You all admit now it is illegal. You have gone ahead and set up a financial arrangement, that is going to be very costly to you.

Mr. Kelley: Well, that would be our responsibility, sir.

The Court: Well, I understand that too. I said, let's talk practically.

Mr. Kelley: Well, that is one of those practical things we are used to in the automobile industry, but——

The Court: It don't do you any good to lose something even though you are competing with General Motors and Ford.

Mr. Kelley: That is correct.

Mr. Ford: I was going to suggest, if your Honor please, that there were several things that occurred to me. In the first place, your Honor asked as to what would happen in case this paragraph were extended. I can tell you some facts but I think they are under the privilege of the grand [fol. 143] jury at Milwaukee, and I don't think I should disclose them, but if I am relieved from that privilege I would be very glad to.

The Court: You mean what happened in the grand jury?

Mr. Ford: No, what evidence was disclosed in the grand jury.

The Court: Well, I wonder whether—I didn't intend to shut Mr. Kelley off when I recognized you. Were you finished? What I was trying to say to shorten these proceedings and to see if we couldn't come to some understanding, you gentlemen are all here, I wonder if we took an adjournment and you went out and sat around the table and drank a cup of coffee, if you couldn't arrange for some compromise here that wouldn't hurt you quite so badly and would give the Government what they are seeking.

Mr. Kelley: If your Honor please, we think we are——

The Court: I know. You think you are at a disadvantage.

Mr. Kelley: We have done all that we have been asked under the circumstances, and I haven't any authority at the present time——

The Court: I think you better send somebody here with authority.

Mr. Kelley: Well, in addition to that, sir, we thought when we were signing this document that it meant something. Now, if it means——

The Court: I will grant you that. There is no use telling [fol. 144] me. I agree with you absolutely; it meant something. The Government was bound and you were bound, and you both lived up to it. Now, the Government is asking for an extension; that is what it amounts to.

Mr. Kelley: Yes. We don't think that is a proper request, if your Honor please.

The Court: Well, I am not saying that it should be granted but it is a proper request. But whatever it may be, before we go into a long, tedious hearing on the facts, which you

are asking here, that it be set down and you be permitted to bring in here and show by evidence your injury and deny and dispute with the Government that they were diligent—that would take a long hearing, wouldn't it?

Mr. Kelley: It might.

The Court: I wonder if you gentlemen can — here in a half an hour sit down and agree on some order that can be entered here that won't be quite so burdensome on you and yet will give the Government—I was thinking, I don't suppose Mr. Ford would consent to this. I was wondering why, if these people want to, why you don't let them go back into the business and let the decree provide that in the event General Motors is stopped that they will have to be cut right off there. It would be a losing proposition for you financially, I would think. I wouldn't think any one would want to do that for a year. And then I have been thinking, [fol. 145] why not shorten the period and make it a year and put the burden on the Government to come back here at the end of the year and ask for another extension.

Mr. Ford: I think that would be contrary to the principles of the Department, and while it might be good for Chrysler, yet consider the fact that there would be a great many other finance companies that would be affected by that and a great many dealers that would be affected by those circumstances. That is, in other words, we have at the present time accomplished a great deal.

The Court: General Motors is not being allowed to run wild.

Mr. Ford: General Motors is out. Anything that Chrysler is losing by this General Motors matter I have no doubt that General Motors is making up a good deal for the expense of this case. They are putting in a great deal of time on this. A great many of their executives have been giving close attention to this matter. They have hired additional clerks; have a tremendous force. I think they had two floors at South Bend and that required additional clerks. In all of these matters somebody has to suffer. The reason why this thing has come to the position that it is in after all is because for years there were apparently violations of the antitrust laws. These gentlemen will agree with me in that regard.

The Court: To be frank about it, I don't believe from [fol. 146] what counsel has said that Chrysler would want to start a finance company until this matter is litigated and

settled. Now, how about shortening the time? You ask for practically an indefinite running of this decree.

Mr. Ford: Well, we asked for a year.

The Court: It seems to me a year would be ample to finish this litigation.

Mr. Ford: Well, we will do everything that we can on it, but I wouldn't like to have your Honor—now it is entirely a matter for your Honor's discretion.

The Court: Yes.

Mr. Ford: We don't want all this work, which has run over three years, thrown out by this situation which we feel is the key of the matter.

The Court: I know, but you are right up now to the Circuit Court of Appeals.

Mr. Ford: Yes, sir.

The Court: And that ought to be settled in sixty or ninety days.

Mr. Ford: And that practically disposes, I think, of the civil case.

The Court: And the Supreme Court will decide whether a writ of certiorari should issue within thirty or sixty days after that.

Mr. Ford: Yes, sir.

[fol. 147] The Court: Then you should know in four or five months whether the matter is settled finally.

Mr. Ford: We would try to get those cases to the Supreme Court as soon as we possibly could. We will not ask any delay. Our briefs are practically ready for the Supreme Court, will be ready in two weeks for the Supreme Court. The same briefs that we have in the Circuit Court will undoubtedly be used there, and I think General Motors is in the same position, so that there will be no particular delay, but yet——

The Court: You can't tell, I know.

Mr. Ford: You can't tell what attitude the Supreme Court will take. They may deny certiorari. If they do we can have this matter disposed of, but remember that we are—we worked on this matter and we are working on it. Now, when I say that I mean that it isn't just eight hours a day. We worked on this General Motors case for months every night until twelve o'clock, and some nights we worked all night.

The Court: Don't the lawyers have a union?

Mr. Ford: Well, apparently they don't.

The Court: Lawyers' guild or something like that?

Mr. Ford: It is rather interesting; we were before one judge who said that he understood that the lawyers went home in the Department of Justice at four thirty and locked up the building no matter what happened. But whatever it was in the past I assure you it is not so now. But, if [fol. 148] your Honor please, this situation is a key to the difficulties, and I feel that no reasonable man would invest money in a finance company at the present time with matters standing as they are, unless these defendants intend to rely on this consent decree as a defense if we bring proceedings against them.

Now, that is a possibility; they might do that. And then the very thing that we are trying to avoid, this discrimination in favor of anybody, is by this decree becoming discrimination in their favor. So I can't see a single way by which this matter can be disposed of justly excepting for your Honor to give us what we ask for one year. We will keep close account of what we have done during that year. We will bring it in to you, and if you say it has been disposed of, or if it hasn't been disposed of in a year or we have been in any way negligent, it will be absolutely right that your Honor will say we shall have no further time. It is only a year. As far as the profits are concerned, the profits of Chrysler Corporation will be greater in the next year than they have been in a great many of the depression years so in that way they are losing nothing.

It is only a matter of speculation in forming a finance company with evils that are inherent in the matter of coercion and discrimination, and they can't help it. As long as a manufacturer is associated with a finance company there is going to be discrimination in favor of that finance com- [fol. 149] pany. If, as Chrysler says, we want this because we can make money on our finance company in order to compete with our cars, we feel that regardless of anything else, of the law or anything else, that that is not a fair proposition, that it would be better for the industry if that system is wiped out as we are trying to wipe it out, and it only confirms me more strongly that we are working in an excellent cause in these matters to avoid that very thing.

Why should the man who has to work to buy a car on time be furnishing money so that a man who is able to buy

for cash can buy that car cheaper? I think that the argument answers the suggestion.

Mr. Kelley: If your Honor please, I protest as vigorously as I know how against that argument and everything about it. The Department has passed on this question. First of all we have the decree that has the provisions that the Department wished in it, of prohibiting the proceedings by an automobile manufacturer in regard to a finance company. It says how they must act with a finance company.

Now, the Department decided that if we have nothing to do with a finance company for a period of a little over two years and then they have not restricted General Motors on that subject that we then could proceed with a finance company, subject to the other restrictions of this decree, to which even today General Motors is not subject except so [fol. 150] far as the Department believes that because the corporation was convicted for certain things it will not do those things again, although all the individuals were acquitted.

What is asked here is that this arrangement, carefully made and consented to by the Department, should be thrown away because Mr. Ford in his wisdom says that an automobile company and a finance company subject to all the other provisions of this decree still can't keep the law. Now, I think that is just an assertion that there is neither evidence nor anything else to support. He has not suggested and nobody has suggested—there has not been a claim in the last two years since this decree was entered with your Honor's signature—that it has been claimed that we have not lived up to it, and I don't think there could be in all honesty such a claim.

Mr. Ford: I think we have had very good cooperation, if your Honor please. Very thankful about it.

Mr. Kelley: All we are saying is that we ought to be relieved from the disadvantage owing to whatever may be the cause of the delays in the General Motors litigation of being at a competitive disadvantage with them when, even if we had a finance company or dealt with a finance company, we could do so only within the terms of this decree.

Now, with the consent of the Department that is what at the present time we would be entitled to do after January 1. And we don't know why, because of the vicissi- [fol. 151] tudes of that other litigation, a court of equity

should support the withdrawal of that consent from this decree.

Now, we allege and claim in our papers in the alternative, first, that the diligence or lack of diligence of the Government in proceeding against General Motors is immaterial because this was a formal decree provision here, made in the light of the circumstances. The Department of Justice in November, 1938, knew a great deal about antitrust litigation, your Honor. They knew more about it than any of the rest of us do. Their requests generally speaking are more favored in the dockets, getting up the dockets and that, than those of the respondents generally. They very much control all litigation. They have had fifty years of experience, very nearly fifty years of experience in antitrust cases, and they deliberately made this.

As I told your Honor, we discussed that question of how long we would be disabled. Mr. Ford speaks as if the terms of this decree were kept it would interfere in some way with his litigation of General Motors. I don't see how it would at all. They can go ahead, they can establish the principles of law. Your Honor, we have——

The Court: We won't argue that at all.

Mr. Kelley: We have to follow them whatever they may be and take the consequences. That we would expect to do.

The Court: What I can't see is why you should be so [fol. 152] solicitous about not being restrained from doing something that you have no intention of doing anyway.

Mr. Kelley: If your Honor please, I don't wish to make any mystery of it, but if the Government can come here on a four days' short notice and change one of the vital provisions of a consent decree made with the formality with which this decree was made, your Honor, what is left for us? What other provisions may they not come in and change?

From our point of view this was one of the most critical provisions in the whole decree, and if coming in like this without any hearing, without any establishing of facts, without anything, they can begin to alter this decree, what does the thing mean? What is left?

The Court: Well, if you want a hearing we will set it down.

Mr. Kelley: If your Honor please——

The Court: If you want to come back again.

Mr. Kelley: The thing that we ask, and ask with the greatest emphasis, is that this motion be dismissed.

The Court: No, I will not dismiss it. I will give you a hearing.

Mr. Ford: Your Honor, just on that, this matter of this four days' notice——

The Court: That is particularly my suggestion.

Mr. Ford: Yes, but this——

The Court: For my own convenience.

[fol. 153] Mr. Ford: This motion was sent to these parties——

The Court: Mr. Swygert came in to consult me about that. I asked him to make it today instead of next week some time on account of my own personal convenience. I had other matters to dispose of. Now, if it is too early we will give them another date.

Mr. Ford: What I had in mind was this. We sent these parties notice. I sent it to Ford and Universal Credit together with that stipulation asking them to sign. Now, this is not a new matter as far as these parties are concerned. It has been called to their attention that we were going to do this since November, and since that time we have had repeated talks over the telephone with the representative, although with Mr. Dills and Mr. Stanley, and I think it was very evident that this matter was going to be heard. We have talked with them with regard to it to try to get a satisfactory date, so it isn't any surprise. They come in here with a brief entirely drawn which I never saw until this morning.

Mr. Kelley: If your Honor please, we really to be quite explicit did not believe honestly that the Government would move to amend the decree without consent. That was a surprise to us, and all the papers that we have drawn have been drawn since we received this formal notice.

The Court: If you didn't have time I will give you more time. When do you want to come back?

[fol. 154] Mr. Kelley: Well, we think that the Government should prove its facts here as alleged.

The Court: They wouldn't have time to introduce evidence this afternoon.

Mr. Kelley: No.

The Court: When do you want to come back?

Mr. Kelley: When would it be convenient?

The Court: Monday afternoon, Tuesday. The next day is Christmas.

Mr. Kelley: Well, if your Honor please tomorrow is Sunday and it will take some time to prepare a case here.

The Court: When do you gentlemen suggest?

Mr. Stanley: Is there any reason why, your Honor, it shouldn't be after the holidays?

The Court: Well, Mr. Ford is saying that it must be heard before January 1st.

Mr. Stanley: Why must it?

The Court: Because it runs out on January 1st. Isn't that what you said?

Mr. Ford: Yes, sir; that is my understanding, your Honor.

Mr. Stanley: The motion is already filed in the court and is pending in the court.

The Court: Do you want to stipulate that the hearing on the request of the Government after January 1st will not be a waiver and that it will be in force until it is heard [fol. 155] and disposed of, and set it at a later date?

Mr. Kelley: Well, we would agree not to proceed under this provision of the decree between now and a hearing if the hearing is fixed for a date certain.

The Court: He is asking if you will agree further than that, that the hearing of this after January 1st will not be deemed to have been a waiver and not come in and take advantage of the fact that it is not being heard before January 1st. In other words, that it be entered nunc pro tunc.

Mr. Kelley: We don't mean by that, that having suggested an agreement, and the Government then finds that we are tied up, they never want to hear this if it is set down for some time.

The Court: I was talking about setting it for a definite date now. If you gentlemen feel that you have not been treated right with reference to the shortness of the notice and that you are not prepared to proceed and you want time, I am disposed to give you all the time that you want within reason, say some day the latter part of January or February, when we can give you a day or two and let you come here.

Mr. Kelley: Well, if your Honor please, we think that this court in the circumstances here hasn't got power to change this decree on the basis of the showing of these papers, and we think that if the Government wants to

litigate that, that the Government should plead and show [fol. 156] on what basis it has a right to open this decree, whether on the basis of a mistake or on the basis that there has been some such general change in economic circumstances——

The Court: In other words, tell you what they are going to rely on?

Mr. Kelley: They should bring in the facts.

The Court: What did they say in their petition? Mr. Ford read it but I don't remember what he did say. He wants you to elect what you are going to rely on, whether it is a mistake or changed conditions or what.

Mr. Ford: Well, if your Honor please, if you ask me the straight question what I am relying on, I am relying on the good judgment of the court to correct an injustice. Now, I don't believe that I should make any further contention in this case. I am presenting to your Honor all facts on the case which are within my motion.

The Court: Relying on all the statements which you have made?

Mr. Ford: Yes, sir, I am relying on those.

Mr. Kelley: Well, one of the statements he made was that innumerable pleas, motions and hearings in the criminal case took place. I don't know how much the gentlemen——

The Court: I don't know whether they were innumerable but they were numerous.

Mr. Kelley: There were three.

[fol. 157] The Court: Three what?

Mr. Ford: There were three pleadings. There was the demurrer; the docket shows that—before your Honor.

The Court: That's right.

Mr. Ford: Then your Honor disqualified himself.

The Court: That's right. I heard you for a whole day.

Mr. Ford: But, if your Honor please, in the cases where there has been any delay, antitrust cases, where in cases like that we have numerous defendants from out of the district, there have been many times litigations that went for two or three years, about whether the defendants could be mistried and things of that sort. This really was a quick case.

The Court: I think so. I think the General Motors criminal case was tried rather speedily.

Mr. Ford: There was the demurrer before your Honor. Then your Honor after overruling the demurrer disqualified himself.

The Court: Yes.

Mr. Ford: Then Judge Lindley was designated.

The Court: Yes.

Mr. Ford: And Judge Lindley made a rule that all the motions should be in by May 1, as I recall it, or some time—I think it was May 1. The defendants filed two motions then. They renewed their motion by demurrer.

The Court: Let's get at it finally. What is the date of [fol. 158] this consent decree?

Mr. Kelley: November 15, 1938.

The Court: November 15, 1938. Now, what is the date of the returned verdict in the General Motors case?

Mr. Ford: November 17, 1939.

The Court: Just one year.

Mr. Stanley: And the civil case was not brought for almost a year after that.

The Court: That is rather a speedy trial, I am granting you that. Now, Mr. Ford—that is true, I inquired about that. Mr. Ford explained that, I thought, quite satisfactorily. He says that the principles of law to be settled in the civil suit against General Motors will be settled eventually in this criminal case.

Mr. Kelley: We deny that, your Honor. We just don't believe that that will be the case, and we think then Mr. Ford, if you open the door here, will be back year after year, saying, well, we hoped it would be decided in the criminal case but it wasn't decided in the criminal case, and our civil case is not decided yet and you still ought to be tied up until the principle of law is decided.

Mr. Ford: The court can take care of that. If I make any unreasonable claim at any time I am only too glad to have the court tell me it is unreasonable. I think I have been reasonable so far, and I can assure Mr. Kelley that [fol. 159] we will not do a thing to try to delay this matter. We will push it along as fast as we can, and if at any time he thinks we are unreasonably delaying it I am willing to come in on two days' notice, or any time, and show whether we are moving quickly or not. He has a wrong idea of what we are trying to do. We are trying to work this thing out to the advantage of everybody. I have said that a great number of times and I assure you it is true.

Mr. Kelley: Your Honor, we will have to be responsible for our showing and not Mr. Ford, and no matter how diligent Mr. Ford is, no matter how good his intentions may be, we are still entitled not to have taken away from us the benefit of the provision of this decree, and that is subject——

The Court: I grant you that you should not have anything taken away from you without at least a fair hearing. Now, all I was going to say is, when do you want that hearing?

Mr. Kelley: I should think some time in January, the latter part of January.

The Court: Can you make a stipulation that will be satisfactory and have the hearing in January in Fort Wayne? I will be in Fort Wayne at that time.

Mr. Ford: We can take this same stipulation and change that date that we have written in now to a date in January.

Mr. Kelley: Because this litigation may go very far, your Honor.

[fol. 160] Mr. Ford: I think this litigation will go far. I think if these matters are going to be opened up it will be a trial of several weeks.

The Court: On this hearing?

Mr. Ford: From the attitude that they take on it.

The Court: Oh, no.

Mr. Kelley: Well, it is a pretty serious thing to open a consent decree, and I think Mr. Ford should be required not to state that he comes in and relies on the good judgment of the court. We all do that, but good judgment of the court operates on legal principles, and I think that he should state the legal principles upon which he is asking the court to apply his good judgment. And I think that the legal principles that are open to him, as I understand it, are either that this provision was made in error under a mistake, or that there has been some change in the economic or legal situation that entitles him to a change.

The Court: There is no claim that it was made mistakenly or through error.

Mr. Kelley: There is some indication in his papers——

The Court: But their judgment as to the time that the litigation will take.

Mr. Kelley: The Supreme Court has said that is not a mistake.

The Court: No, they are not relying on any mistake made, [fol. 161] as I understand it.

Mr. Kelley: If he withdraws that, under the cases——

The Court: Lawyers in that case make very many mistakes.

Mr. Kelley: Your Honor, under the cases he is bound to show there has been some such great change in economy or general conditions as entitles him to change the substance of this decree. Those cases——

The Court: Not changing the substance. He is simply extending the time.

Mr. Ford: Interpreting the decree.

Mr. Kelley: Well, if it is a change—I don't think the court needs an interpretation because I don't understand there is doubt about what January 1 means.

The Court: Yes.

Mr. Kelley: And certainly in the negotiations this figure, this date, was never put down as meaning the termination of the General Motors litigation. This was a compromise figure, reached by negotiation with one of the makers of the decree, of the agreement, and there will have to be a showing, I conceive, more showing than anything that appears in these papers to warrant a change, and we would like to have the Government set forth their grounds.

The Court: What were these affidavits that were filed?

Mr. Ford: Those were affidavits of notice. And here are the papers in the Ford case with a final decree.

[fol. 162] The Court: I think we might as well take a little recess and get a cup of coffee. I am getting a headache. Come back at two o'clock.

Thereupon the hearing was adjourned until 2:00 o'clock P. M. of the same day, Saturday, December 21, 1940.

[fol. 163]

Hammond, Indiana,
Saturday, December 21, 1940,
2:00 o'clock P. M.

Hearing resumed.

Parties Present: Same as before.

The Court: Gentlemen, I wonder what authority the court has to take up a matter of this kind without a showing. There has been a petition filed, I take it, and a statement made by Mr. Ford as to the necessity for an extension of this order. Now, I am wondering whether, espe-

cially in view of the fact that counsel for the defense have challenged it, whether it must not of necessity be set down for a hearing and the taking of testimony, either by affidavit or oral testimony, as to the necessities. My suggestion before lunch was made with the hope that there might be some way of counsel agreeing to the partial—to a continuance for a partial granting at least of what the Government is asking. I thought perhaps that you could agree that the order might be continued for one year, leaving it open then for application to be made at the expiration of a year, if it was thought that one side or the other is entitled to some relief, but if you don't want to agree to anything I think we will just absolutely have to set it down. I doubt very much—have you examined the authorities, Mr. Ford, on the right of the court to extend a provision [fol. 164] of this kind?

Mr. Ford: I assumed that that was within the discretion of the court. Of course the statements in the petition are verified by oath.

The Court: The statements are verified?

Mr. Ford: Yes, sir.

The Court: Well, that constitutes some proof, of course. Are they denied?

Mr. Kelley: They are all denied, yes, sir.

The Court: Have you filed any denial?

Mr. Kelley: Yes, sir.

Mr. Ford: But the denials are mostly conclusions of law, I think, rather than denials of fact.

Mr. Kelley: They are denials of the statements made in the petition, your Honor.

The Court: I haven't examined the pleadings.

Mr. Ford: Here is a copy of the petition.

The Court: You practically read the petition, didn't you?

Mr. Ford: Yes, sir; and this is the affidavit in support of it.

The Court: Yes. Do you deny that there was any untoward delay?

Mr. Kelley: All those things, yes, your Honor. We filed our papers and also a memorandum there on it.

The Court: Yes. Now, I haven't examined these, but in [fol. 165] view of the fact that counsel seem to think that they were mistreated, or treated rather shabbily in the way of time, perhaps they ought to be given more time. I didn't realize that we were setting this thing two or three days

off and counsel had to come from New York, and if that is a fact I am perfectly willing and think they should have all the time that is necessary to make a showing.

Mr. Kelley: If your Honor please, we mention that incidentally to show how the Government was operating on this thing. If we had known that it was at your Honor's convenience we would not have mentioned it at all.

The Court: The shortness of the time?

Mr. Kelley: Shortness of the time.

The Court: I have other matters all of next week. I have to be in another division on the day after Christmas, and I suggested to Mr. Swygert that Saturday would be the most available time, although I am going to be in Fort Wayne—I stated I was going to be in Fort Wayne on Thursday after Christmas on another matter, and if you want to take it up then we will take it up.

Mr. Kelley: But our difficulty is not that at all. Our difficulty is that we do not believe that there is authority in this court against a defendant who is not today consenting to modify this provision of the decree.

The Court: Well, do you contest the authority of the [fol. 166] court to do that on proper showing, or are you resting on the insufficiency of the showing?

Mr. Kelley: We don't believe that they can make a showing that would support that action by the court.

The Court: You don't deny the power of the court to do such a thing on a proper showing by evidence?

Mr. Kelley: We don't deny the power of the court to do it on a proper showing, but we don't believe that under the circumstances of this case they can make a proper showing that would warrant the court in exercising that discretion.

Mr. Ford: Aren't a great many of the facts within the judicial knowledge of the court?

The Court: Yes.

Mr. Ford: In the matter of this criminal proceeding, and I think you can form an opinion upon which you know that better than any evidence I can present as to whether there has been delay or not. And then the only question comes as to whether the criminal case is of that nature that we should have brought the civil suit and prosecuted that at the same time. Now, that is something on which perhaps people might vary in judgment. It is something which we probably could not agree on, but that is a disputed matter

which would be a conclusion of fact, or perhaps fact and law, on which your Honor would draw conclusions.

Then, if you come to the conclusion that there has been [fol. 167] no delay and that those two cases reasonably could not be prosecuted together, and the result would be reached as quickly with the one suit as with two, then it comes down to a question of whether or not your Honor feels that the entire justice and equities of the case justify your Honor in using that clause of the decree which says that the court may modify. Then when you get around to modifying it seems to me you have two inconsistent things. In the first place you have the parties doing everything that they should have done to protect the public generally under the antitrust laws, and, on the other hand, the parties setting a date.

Now, as I said in the beginning, I think the substance rather than a date, where time is not declared to be of the essence, should be what guides your Honor in using his discretion in granting this motion. I don't see how anything is going to help your Honor in the way of facts in deciding that. I just state briefly the way the thing lies in my mind.

The Court: I agree with you to this extent, that I can remember, now that my memory is refreshed, I can remember practically everything that happened. I remember very distinctly the array of counsel that were present and the consideration that was given when the consent decrees were presented, and then there was a delay of a week or so and counsel came back, and at this time parties, [fol. 168] not parties to the suit, but interested in the proceedings, were permitted to make certain suggestions. They wanted to refer it back to a convention of some kind, and Mr. Arnold objected to that quite strenuously. He didn't want the orders of the court, proposed orders, reported to the convention of delegates representing—I don't know whether they were representing automobile companies or finance companies. Finance companies, I think. I remember all that.

Now, I was somewhat familiar with the proceedings in the prosecution after I disqualified myself. I know that Judge Lindley came there and heard motions, reconsidered a ruling on a demurrer, and was quite prompt in setting the case for trial, and then he came there and everybody worked diligently in that case for six or seven weeks. That

was under my observation; I was home; I was there in chambers and saw Judge Lindley. I know there was no delay there by anyone—unreasonable delay. I think Mr. Crumpacker participated in the trial, didn't you, Mr. Crumpacker? And I remember all that.

Now, I think that the record that has been referred here to me as having been prepared—I have forgotten how many pages you said, but I know it must be a long record, and I know that to take an appeal up takes time, and I don't think there has been any unreasonable delay in the appeal, and we certainly can't say that the Circuit Court [fol. 169] of Appeals are delaying the matter. They are pretty prompt.

Now, it does seem to me, Mr. Kelley, to cut down everything that has been done, giving the parties in all these cases on both sides, giving them the credit of being in good faith—you folks were in good faith when you entered into this consent decree; give the Government the same consideration, the same presumption.

Mr. Kelley: Well, if your Honor please——

The Court: Aren't we going to cut down and just cut away everything that has been done in a constructive way by permitting you folks now to go back into this business that the Government is seeking to have established as unlawful in another case, and if they do then they will have to prosecute you in some sort of a proceeding, or compel you to stop. If the court holds that the proceeding that he is talking about and that you are seeking relief is unlawful and is contrary to the——

Mr. Kelley: If your Honor please, we aren't asking any relief. If your Honor please——

The Court: Yes, you are. You are asking for negative relief at least.

Mr. Kelley: By the decision of this court and the consent of the Government it is made an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other pro- [fol. 170] visions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941.

The Court: You say by the express provision of this decree. It just so happens in this case—this is a typical case—the court never wrote one word of that decree. It was consented to by both sides. So why don't you say by

consent of the Government and by consent of the present corporation this decree was entered by the court?

Mr. Kelley: Well, the decree was entered by the court.

The Court: Oh, yes, but on the request then of both sides.

Mr. Kelley: The Supreme Court of the United States has held in the packers case that a consent decree was not a mere contract, it was a judicial act.

The Court: That is correct; at the request of the parties.

Mr. Kelley: Now, if your Honor will bear with me, what I say is that by the terms of this judicial act, however it became one, that this express condition—"if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the manufacturer from acquiring and retaining ownership of and/or [fol. 171] control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a."

12a has many provisions for suspending the decree, none of which apply to this, as I understand.

"The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted."

Now, if the Court please, we are not here asking relief. We are here asking that without our consent the court do not modify this provision.

Now, I think it will interest the court if I say that in the earlier drafts of the decree we had a provision that if the Government did not proceed diligently in the General Motors case that we should have a right also to do these same things, and at the request of the Government we took that out because they said they didn't want the question of the policies of the Government to be debated, for us to come and say about this or that that they were not diligent. And what we say is on the face of the language in the decree, and I only mention this other point incidentally. Policies is really irrelevant in this case. This was something that is

[fol. 172] one of the main terms of the decree; this was what the Government agreed to. The Government knew as well as we did at that time how fast they thought they could go. Now, I don't know what was in the minds of the Government, but from some of the things they told us in the Department they thought General Motors was going—they were going to perhaps consent to a decree or do something. They had facts from what they told us that something might happen.

Mr. Ford: That's right.

Mr. Kelley: But they didn't. But they knew all about that.

The Court: It may be that they made a misjudgment there, they made a mistake, a mistake of judgment as to the time.

Mr. Kelley: Well, that is not mistake in the legal sense, and, as I understand Mr. Ford before recess for luncheon, he said they were not relying on mistake.

The Court: Well, not mistake, not error, but mistake of judgment he is relying on, as I understand it.

Mr. Kelley: But that was one of the things, just as it may have been a mistake of judgment for us to go out of the finance company business, something like that. We all are standing by what we undertook to do. As I say, there has been no breath of suspicion that we haven't lived up to this decree. Why shouldn't the Government live up to its side of it?

The Court: They should.

[fol. 173] Mr. Kelly: One of the things it should do is not to try to modify this paragraph.

The Court: I don't agree with you.

Mr. Kelley: They are taking away a substantial right that was granted by that decree, and we don't think there is any showing before this court that supports that. And we don't believe that even if this court sets the case down for hearing that Mr. Ford has anything that he can produce that can establish such a showing.

The Court: In other words, you are willing now to submit it on the showing that Mr. Ford has made and on your answers?

Mr. Kelley: Your Honor, we are in the hands of the court, and whatever decision the court makes the only alternatives that are open to us after it makes it are either to abide by it or to appeal from it.

The Court: That's right.

Mr. Kelley: And that's the position where we find ourselves.

The Court: Mr. Crumpacker, you were on your feet a few minutes ago.

Mr. Crumpacker: I was going to suggest before he spoke that it would seem to me that the court in his questions and the remarks here by Mr. Ford was under the impression that this consent agreement provides that they should wait until this criminal case is decided. That is not the fact. There is no provision in the consent decree that they should await [fol. 174] the outcome of that case, and yet the court is being asked to read that into the order, or put that into the agreement, that they should await the outcome of that case.

The case that was to be tried was an injunction suit, and they didn't file it for nearly two years after this consent decree was entered. Now, that is the case that was to be brought and pushed to final adjudication. That is the case —and a year after Judge Lindley instructed the jury in the criminal case, and he knew that the question that is here involved was not decided in the criminal case. They waited for a year after that knowledge came to them before they started this injunction suit.

Now, what the court is doing, following Mr. Ford's suggestion here, is to simply try an injunction suit in this case on a motion filed in this consent decree, because there is no agreement in there that there shall be any waiting on that criminal case at all. The criminal case does not decide the question that is up here now, that is, the right of the corporation to own or control a loan company. This is deciding an injunction case here just on a motion like this, and reading into that consent decree something that isn't in there at all and was outside of the minds of the parties when they made the consent decree.

There is two provisions there. Some of them are dependent on the outcome of the criminal case and some are not, and this is one that is not.

[fol. 175] Now, Mr. Ford by his argument here and his motion is trying to bring them all within the awaiting period for the criminal case and not complying with that consent decree at all by leaving out of the criminal proceedings the thing that is here before the court. It seems to me that it is

a case of his asking the court to enter an injunction here—that is what it amounts to—under a motion in this case.

The Court: Well, of course, his reasoning there that the injunction suit was not brought until a late day and has not been pushed for trial is because the same questions of law are to be determined in the appeal in the criminal case.

Mr. Crumpacker: And he knew when Judge Lindley instructed the jury, a year before this injunction suit was brought, that the question was not decided in the criminal case. The jury was told that it was not in the case. Now, he is asking the court to await the outcome of the criminal case; in other words, continue an injunction against these people and keep them in their unfavorable condition with General Motors. I don't remember exactly, although I was in the General Motors trial, but, as I remember it, the disparity of positions due to this loan agency amounted to several million dollars, and it is handicapping these people to that extent to continue this thing. Now, that is what he is asking. That is a handicap that is injuring them.

Now, if there is something that can be done to hasten, either by temporary injunction or something, in that General Motors case, all well and good, but it isn't being done, it is just let drift. Why? To await the outcome of the [fol. 176] criminal case, and which these people didn't agree to do.

The Court: I realize there is something—there is a good deal in what you say, Mr. Crumpacker, but Mr. Kelley said this this morning, as I understood him, that they were contesting this largely as a matter of principle, that they didn't propose to, at the present time at least, go into the business—or change their manner of doing business, and they were afraid for the present in this matter these same people might be back in a few months asking for another change.

Mr. Crumpacker: He told you this morning that they never did own a loan company.

The Court: How are they being hurt?

Mr. Crumpacker: All they did was to make arrangements with some loan company that it should make loans on their cars.

The Court: Are they enjoined from doing that now?

Mr. Crumpacker: They are enjoined from doing that in here. If they could be enjoined from owning or controlling a loan company they probably wouldn't care, but they are

enjoined from making any arrangements with them at all, and in the meantime General Motors and all the rest except Ford, which has consented to the order or decree, every other manufacturing company in the United States can go on and make an arrangement and it is all right. But these people, the second largest in the United States, are denied that right. Even General Motors has a monopoly on the [fol. 177] field. It is going right on with GMAC and GMAC of Indiana right now. And while Mr. Ford may think that the criminal case is going to decide a number of questions in the civil case General Motors is not here agreeing to that, not for a minute. That is still to be decided, how far that will decide the injunction suit, and the injunction suit is the one these people agreed to here, not this criminal suit.

Mr. Kelley: I said this morning we had no present plans. I don't wish to make any engagement for the future.

The Court: Well, why don't you let this be continued then until you do have present plans and then come in?

Oh, well, I am not going to start a proposition and have counsel shake their heads before I get through. That don't do me any good at all. It doesn't convince me to sit at a table and just shake your head. If you have anything further to offer I will hear it, but I don't want just these gestures. It don't convince me at all. Did you have something further, Mr. Ford?

Mr. Ford: I was just going to call your Honor's attention to the fact that it is not true that these companies may not associate with finance companies if the finance companies are registered. But the thing is they must not discriminate between finance companies and maintain exchange bonuses with finance companies indiscriminately. They have the right, and, furthermore, there is a provision by which if General Motors through GMAC is giving lower [fol. 178] terms than the other finance companies, then Chrysler may make up the difference.

The Court: And it appears to me if the Chrysler Company is not proposing to go into the finance business they are not being hurt. Mr. Kelley, I can't see where you are being hurt a bit by an extension of the time in this decree.

Mr. Kelley: Because, if your Honor please, we have a right, as soon as the injunction as provided by this decree comes to an end, then to consider arrangements, and it may be very desirable to do so.

The Court: All right, consider your arrangements and come to the court and ask for a modification and show that you are being hurt by competition with General Motors or some company, and then it will be time enough for a court of equity to consider extending or curtailing the time. You make no showing now that you will be harmed one penny's worth.

Mr. Kelley: If your Honor please, I say with the utmost respect that I don't think that ordinarily a respondent who is a party to a consent decree is in the position that it has to show that it won't be hurt by having the Government come in and make more rigorous the terms of that consent decree without its consent. I don't think the authorities go to that degree, if your Honor please. I think it is just the contrary, that the Government has made this engagement here as your Honor pointed out, that although this is a judicial act it is also an agreement, and I don't think that [fol. 179] the Government without a very different showing than has appeared thus far has a right to a modification.

The Court: What is the prayer of the petition here?

Mr. Ford: That a modification be made of the decree, your Honor.

The Court: I am willing to modify this decree to the extent of extending it for one year. My recollection is that you asked for something more than that.

Mr. Ford: Yes, sir; that is correct. Without prejudice further extension, but that's all that I ask, that it be extended for one year, and the modification of this decree shall not preclude the plaintiff from asking a further extension of time within which the aforesaid decree may be entered. I don't think that means anything. That the modification of this decree——

The Court: If it don't mean anything let's strike it out.

Mr. Ford: Well, all right. I think that's all right.

The Court: Well, you have here—this is your petition?

Mr. Ford: Well, there is a proposed order.

The Court: Do you have a proposed order?

Mr. Ford: I have a proposed order. I have stricken out that last line.

The Court: Suppose you submit it to counsel on the other side and see if there are any objections.

Mr. Ford: I have already sent this to some counsel. (Handing to counsel.)

[fol. 180] Mr. Kelley: I don't know what to say, your Honor, but we just thoroughly object to it.

The Court: Well, I am simply extending the time for one year from January 1st, 1941 to January 1st, 1942. That's all I am doing.

Mr. Kelley: Well, we think that is a very material change.

The Court: I know you do, but I am asking you now if this order meets with your approval—if you have any objection to the provisions of the order except the fundamental objection that you have to entering any order of that kind?

Mr. Ford: Objection to the form.

The Court: Yes, the form of it.

Mr. Crumpacker: The form is the same as the other one except the change of date?

Mr. Ford: Yes.

Mr. Crumpacker: No.

The Court: All right then, I will sign it.

[fols. 181-182] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 183] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVISION

Civil No. 9

UNITED STATES OF AMERICA, Complainant,

v.

CHRYSLER CORPORATION, et al., Defendants

ORDER OF MODIFICATION OF FINAL DECREE—December 21, 1940

This matter came on to be heard by the Court on a motion of the United States for modification of the final decree, and the Court having heard argument of counsel and having considered the matter, and it having appeared to the Court that the allowance of such motion is just and equitable,

Now, Therefore, It Is Ordered, Adjudicated And Decreed that the aforesaid final decree shall be and is hereby modi-

fied so that the second paragraph of section 12 thereof shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1942, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted.

And It Is Further Ordered, Adjudicated And Decreed that except as thus modified the decree as previously entered [fols. 184-185] shall stand in full force and effect.

By the Court:

Dated: December 21, 1940.

Thos. W. Slick, Judge.

[fols. 186-187] In United States District Court

[Title omitted]

Petition for Appeal—Filed February 14, 1941

Now come petitioners, Chrysler Corporation, De Soto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation and considering themselves aggrieved by the Final Decree in Modification made and entered on December 21, 1940, in this Court in the above entitled cause, pray that an appeal be allowed to the Supreme Court of the United States. The particulars wherein said petitioners consider the Final De-

cree in Modification erroneous are set forth in their Assignment of Errors which is filed herewith.

Wherefore, your petitioners pray that an appeal may be allowed in their behalf to the Supreme Court of the United States for the correction of the errors so complained of and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Parker, Crabill, Crumpacker, May, Carlisle & Beamer, S. J. Crumpacker, Larkin, Rathbone & Perry, Attorneys for Defendants, Chrysler Corporation, De Soto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation.

[fol. 188] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed February 14, 1941

Now come Chrysler Corporation, De Soto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation, the appellants herein, and file the following Assignment of Errors upon which they will rely in the prosecution of the appeal herewith petitioned for in said cause to the Supreme Court of the United States from the Final Decree in Modification of this Court entered on the 21st day of December, 1940.

The District Court erred:

1.) In failing to make findings of fact and state conclusions of law.

2.) In failing to dismiss the motion for modification of the final decree filed more than six (6) months after entry of said final decree, as prayed in defendants' answer.

3.) In failing to require the plaintiff to make any showing of facts in support of its motion.

4.) In modifying the final decree on motion without requiring evidence in support of the allegations contained in said motion and controverted in the answer.

5.) In failing to dismiss the motion for lack of proof of the allegations contained in said motion and denied by the [fol. 189] answer.

6.) In enjoining the defendants from acquiring and retaining ownership of, or control over, or interest in any finance company until after January 1, 1942.

7.) In holding that the defendants may not exercise the right expressly conceded and granted by the United States in the consent decree, section 12, providing: That in the absence of entry of final decree before January 1, 1941, requiring General Motors Corporation permanently to divest itself of ownership and control of General Motors Acceptance Corporation, the defendants may apply for and obtain an order or decree that nothing in the consent decree precludes the defendants from acquiring and retaining ownership or control over or interest in any finance company.

8.) In modifying the consent decree without acquiescence of the parties.

9.) In rendering the Final Decree in Modification filed and entered herein in the District Court of the United States for the Northern District of Indiana, South Bend Division, on December 21, 1940, wherein said Court modified Paragraph 12 of said consent decree dated November 15, 1938.

Prayer for Reversal

For which errors the defendants, Chrysler Corporation, De Soto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation, pray that the said decree of the District Court of the United States for the Northern District of Indiana, entered December 21, 1940, in the above entitled cause, be reversed [fols. 190-192] and the petition dismissed; that the amount of the cost bond to be given by appellants be fixed; that citation issue to the appellee named above; and for such other and further relief to which appellants may be entitled.

Respectfully submitted. Parker, Crabill, Crumpacker, May, Carlisle & Beamer, Larkin, Rathbone & Perry, Attorneys for Appellants.

[fol. 193] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVISION

No. 9

CHRYSLER CORPORATION, DESOTO MOTOR CORPORATION, PLYMOUTH MOTOR CORPORATION, DODGE BROTHERS CORPORATION, and CHRYSLER SALES CORPORATION, Appellants,

v.

UNITED STATES OF AMERICA, Appellee

ORDER ALLOWING APPEAL—February 14, 1941

The appellants in the above entitled case and each of them, have prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the decree made and entered in the above entitled case by the District Court of the United States for the Northern District of Indiana on the twenty-first day of December, 1940, and from each and every part thereof, and have presented and filed their petition for appeal, assignment of errors, prayer for reversal, and statement as to jurisdiction pursuant to the statutes of the United States and the Rules of the Supreme Court of the United States in such cases made and provided:

It Is Now Ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the District Court of the United States for the North-
[fol. 194] ern District of Indiana in the above entitled cause as provided by law, and

It Is Further Ordered that the Clerk of the United States District Court for the Northern District of Indiana shall prepare and certify a transcript of the record, proceedings, and decree in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within forty (40) days of this date, and

It Is Further Ordered that security for costs on appeal be fixed in the sum of Five Hundred Dollars ($500.00).

Dated Feb. 14, 1941.

(S.) Thos. W. Slick, United States District Judge for the Northern District of Indiana.

[fols.195-196] Bond on appeal for $500.00 approved and filed February 14, 1941 omitted in printing.

[fols. 197-198] Citation in usual form showing service on United States Attorney, filed February 14, 1941, omitted in printing.

[fol. 199] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD

SIR:

You Are Hereby Requested to make a transcript of record to be filed in the Supreme Court of the United States, pursuant to an appeal allowed in the above entitled cause and to include in such transcript of record the following, and no other papers, to wit:

1. Complaint, filed herein on November 7, 1938;

2. Answer of defendants Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation, and Chrysler Sales Corporation to said complaint, together with acknowledgment of service on November 7, 1938;

3. Final decree herein dated November 15, 1938;

4. Plaintiff's notice of motion and hearing thereon dated December 17, 1940;

5. Order for hearing dated December 17, 1940;

6. Plaintiff's motion for modification of final decree entered herein on December 21, 1940;

7. Affidavit in support of motion for modification of final decree entered herein on December 21, 1940;

8. Answer of Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation, and Chrysler Sales Corporation to motion for modification of final decree, filed herein on December 21, 1940;

[fol. 200] 9. Affidavit in support of answer of Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation, and Chrysler Sales Corporation to motion for modification of final decree, filed herein on December 21, 1940;

10. Final decree in modification entered herein on December 21, 1940;

11. Petition for appeal filed herein on the 14th day of February, 1941;

12. Assignment of errors accompanying said petition for appeal filed herein on the 14th day of February, 1941;

13. Statement as to the jurisdiction of the Supreme Court of the United States accompanying the petition for appeal filed herein on the 14th day of February, 1941;

14. Order allowing said appeal and fixing the amount of the bond on appeal filed herein on the 14th day of February, 1941;

15. The appeal bond filed herein on the 14th day of February, 1941 and approved on the 14th day of February, 1941;

16. Citation and the acknowledgment of service thereof filed herein on the 14th day of February, 1941;

17. Notice of Allowance of Appeal, enclosing the appeal papers herein, and statement directing attention to the provisions of paragraph 3 of Rule No. 12 of the Rules of the Supreme Court of the United States, together with acknowledgment of service thereof;

18. This praecipe and acknowledgment of service thereof.

Said transcript to be prepared as required by law and the rules of this Court and the rules of the Supreme Court of the United States and to be filed in the office of the Clerk of the Supreme Court of the United States on or before the 26th day of March, 1941.

Dated: February 17, 1941.

Larkin, Rathbone & Perry, Attorneys for Appellants Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation, and Chrysler Sales Corporation.

[fols. 201-202] Service of the above praecipe accepted and acknowledged, this 17th day of February, 1941.

(S.) James R. Fleming, Attorney for Appellee, by Charlotte B. Stillwell, Clerk.

To: Miss Margaret Long, Clerk, United States District Court for the Northern District of Indiana.

[fol. 203] IN UNITED STATES DISTRICT COURT

[Title omitted]

COUNTER-PRAECIPE FOR ADDITIONAL DOCUMENTS AS TRANSCRIPT OF THE RECORD—Filed February 25, 1941

To the Clerk of the District Court of the United States for the Northern District of Indiana, South Bend Division:

You are hereby requested to incorporate into the transcript of the record to be filed in the Supreme Court of the United States herein, pursuant to the appeal of Chrysler Corporation, De Soto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation, in addition to such portions as are indicated in the praecipe of the defendants, the following:

1. The official Court stenographer's transcript of the proceedings held on the Motion for Modification of Final Decree on December 21, 1940, a copy of which is annexed hereto, marked "A", and made a part of this document as fully as if it were here set forth in full.

2. This counter-praecipe and proof of service thereof.

Dated February 21, 1941.

James R. Fleming, United States Attorney for the Northern District of Indiana, South Bend Division.

[fols. 204-205] Washington, D. C.
February 21, 1941.

I have this day served the attached counter-praecipe upon the defendants therein named, by mailing to their attorneys of record a copy thereof, together with a notice of the filing of the same. Such service was made by mailing to said attorneys, postage prepaid, the aforesaid copy and letter in an envelope addressed to Parker, Crabill, Crumpacker, May, Carlisle and Beamer, 811-812 J. M. S. Building, South Bend, Indiana.

Edmond J. Ford, Special Assistant to the Attorney General.

Subscribed and sworn to before me this 21st day of February, 1941. Dorothy J. Heale, Notary Public. (Seal.)

[fol. 206] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed February 14, 1941

Now come petitioners, Commercial Credit Company (a Delaware Corporation), Commercial Credit Corporation, (formerly Commercial Credit Company, a Pennsylvania corporation), Commercial Credit Corporation (formerly Commercial Credit Company, an Iowa corporation), Commercial Credit Corporation (formerly Commercial Credit Company, a Michigan corporation), Commercial Credit Corporation (formerly Commercial Credit Company, a Minnesota corporation), Commercial Credit Corporation (formerly Commercial Credit Company, a Missouri corporation), Commercial Credit Corporation (formerly Commercial Credit Company, an Illinois corporation), Commercial Credit Corporation (formerly Commercial Credit Company Inc., a Wisconsin corporation), Commercial Credit Corporation (a New Jersey Corporation), and Commercial Credit Corporation (formerly Commercial Credit Company, Inc., an Indiana Corporation) and considering themselves aggrieved by the Final Decree in Modification made and entered on December 21, 1940, in this Court in the above entitled cause, pray that an appeal be allowed to the Supreme Court of the United States. The particulars wherein said [fol. 207] petitioners consider the Final Decree in Modification erroneous are set forth in their Assignment of Errors which is filed herewith.

Wherefore, your petitioners pray that an appeal may be allowed in their behalf to the Supreme Court of the United States for the correction of the errors so complained of and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Duane R. Dills, Paul M. Butler, Attorneys for Petitioners Above Named.

[fol. 208] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed February 14, 1941

Now come Commercial Credit Company (a Delaware corporation), Commercial Credit Corporation, (formerly Com-

mercial Credit Company, a Pennsylvania corporation), Commercial Credit Corporation (formerly Commercial Credit Company, an Iowa corporation), Commercial Credit Corporation (formerly Commercial Credit Company, a Michigan corporation), Commercial Credit Corporation (formerly Commercial Credit Company, a Minnesota corporation), Commercial Credit Corporation (formerly Commercial Credit Company, a Missouri corporation), Commercial Credit Corporation (formerly Commercial Credit Company, an Illinois corporation), Commercial Credit Corporation (formerly Commercial Credit Company, Inc., a Wisconsin corporation), Commercial Credit Corporation (a New Jersey Corporation), and Commercial Credit Corporation (formerly Commercial Credit Company, Inc., an Indiana corporation) the appellants herein, and file the following Assignment of Errors upon which they will rely in the prosecution of the appeal herewith petitioned for in said cause to the Supreme Court of the United States for the Final Decree in Modification of this Court entered on the 21st day of December, 1940.

[fol. 209] The District Court erred:

1. In making and entering the Final Decree in Modification dated December 21, 1940.

2. In modifying the Final Decree dated November 15, 1938 without the acquiescence of the parties.

3. In failing to dismiss the motion for modification of the Final Decree.

4. In failing to make findings of fact and state conclusions of law.

Prayer for Reversal

For which errors the defendants, Commercial Credit Company (a Delaware corporation), Commercial Credit Corporation (formerly Commercial Credit Company, a Pennsylvania corporation), Commercial Credit Corporation (formerly Commercial Credit Company, an Iowa corporation), Commercial Credit Corporation (formerly Commercial Credit Company, a Michigan corporation), Commercial Credit Corporation (formerly Commercial Credit Company, a Minnesota corporation), Commercial Credit Corporation (formerly Commercial Credit Company, a Missouri corporation), Commercial Credit Corporation (formerly Com-

mercial Credit Company, an Illinois corporation), Commercial Credit Corporation (formerly Commercial Credit Company, Inc., a Wisconsin corporation), Commercial Credit Corporation (a New Jersey Corporation), and Commercial [fol. 210] Credit Corporation (formerly Commercial Credit Company, Inc., an Indiana corporation) pray that the said decree of the District Court of the United States for the Northern District of Indiana, entered December 21, 1940, in the above entitled cause, be reversed and the motion dismissed; that the amount of the cost bond to be given by appellants be fixed; that citation issue to the appellee named above, and for such other and further relief to which appellants may be entitled.

Respectfully submitted, Duane R. Dills, Paul M. Butler, Attorneys for Appellants.

[fol. 211] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVISION

Civil No. 9

COMMERCIAL CREDIT COMPANY, a Delaware Corporation, Commercial Credit Corporation, a Pennsylvania Corporation, Commercial Credit Corporation, an Iowa Corporation, Commercial Credit Corporation, a Michigan Corporation, Commercial Credit Corporation, a Minnesota Corporation, Commercial Credit Corporation, a Missouri Corporation, Commercial Credit Corporation, an Illinois Corporation, Commercial Credit Corporation, a Wisconsin Corporation, Commercial Credit Corporation, a New Jersey Corporation, Commercial Credit Corporation, an Indiana Corporation, Appellants,

against

UNITED STATES OF AMERICA, Appellee

ORDER ALLOWING APPEAL—February 17, 1941

The appellants in the above entitled case and each of them, have prayed for the allowance of an appeal in this cause to the supreme court of the United States from the decree made and entered in the above entitled case by the District Court of the United States for the Northern Dis-

trict of Indiana on the twenty-first day of December, 1940, and from each and every part thereof, and have presented and filed their petition for appeal, assignment of errors, prayer for reversal, and statement as to jurisdiction pursuant to the statutes of the United States and the Rules of the Supreme Court of the United States in such cases made and provided:

[fol. 212] It Is Now Ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the District Court of the United States for the Northern District of Indiana in the above entitled cause as provided by law, and

It Is Further Ordered that the Clerk of the United States District Court for the Northern District of Indiana shall prepare and certify a transcript of the record, proceeding, and papers in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within forty (40) days of this date, and

It Is Further Ordered that security for costs on appeal be fixed in the sum of Five Hundred Dollars ($500.00).

Dated: February 17, 1941.

Thos. W. Slick, United States District Judge for the Northern District of Indiana.

[fols. 213-214] Citation in usual form, filed Feb. 17, 1941, omitted in printing.

[fol. 215] In United States District Court

[Title omitted]

Praecipe for Transcript of Record—Filed February 17, 1941

To the Clerk of said Court, Sir:

Please prepare a transcript of the complaint filed by the United States of America, the answer filed by Commercial Credit Company, (a Delaware corporation), Commercial Credit Corporation (a Pennsylvania corporation), Commercial Credit Corporation (an Iowa corporation), Commercial Credit Corporation (a Michigan corporation), Commercial Credit Corporation (a Minnesota corporation), Commercial Credit Corporation (a Missouri corporation),

Commercial Credit Corporation (an Illinois corporation), Commercial Credit Corporation (a Wisconsin corporation), Commercial Credit Corporation (a New Jersey corporation) and Commercial Credit Corporation (an Indiana corporation), the Final Decree dated November 15th, 1938, Notice of Motion of United States of America dated December 17th, 1940, Order of Court setting date for hearing of Motion dated December 17th, 1940, Motion of complainant for Modification of Final Decree, Affidavit in support of Motion for modification for Final Decree, Final Decree in Modification dated December 21st, 1940, and all papers filed in this cause on February 17, 1941 relating to the Appeal of Commercial Credit Company (a Delaware corpora-
[fol. 216] tion), Commercial Credit Corporation (a Pennsylvania corporation), Commercial Credit Corporation (an Iowa corporation), Commercial Credit Corporation (a Michigan corporation), Commercial Credit Corporation (a Minnesota corporation), Commercial Credit Corporation (a Missouri corporation), Commercial Credit Corporation (an Illinois corporation), Commercial Credit Corporation (a Wisconsin corporation), Commercial Credit Corporation (a New Jersey corporation), and Commercial Credit Corporation (an Indiana corporation), all of which papers were filed in the above entitled cause, and transmit the same to the Clerk of the Supreme Court of the United States in accordance with the rules of the Supreme Court of the United States.

Dated February 17, 1941.

Duane R. Dills, Paul M. Butler, Attorneys for Defendants.

[fols. 217-220] Bond on Appeal for $500.00 approved and filed February 17, 1941, omitted in printing.

[fol. 221] IN UNITED STATES DISTRICT COURT

[Title omitted]

COUNTER-PRAECIPE FOR ADDITIONAL DOCUMENTS AS TRANSCRIPT OF THE RECORD—Filed February 25, 1941

To the Clerk of the District Court of the United States for the Northern District of Indiana, South Bend Division:

You are hereby requested to incorporate into the transcript of the record to be filed in the Supreme Court of the

United States herein, pursuant to the appeal of Commercial Credit Company (a Delaware corporation), Commercial Credit Corporation (formerly Commercial Credit Company, a Pennsylvania corporation), Commercial Credit Corporation (formerly Commercial Credit Company, an Iowa corporation), Commercial Credit Corporation (formerly Commercial Credit Company, a Michigan corporation), Commercial Credit Corporation (formerly Commercial Credit Company, a Minnesota corporation), Commercial Credit Corporation (formerly Commercial Credit Company, a Missouri corporation), Commercial Credit Corporation (formerly Commercial Credit Company, an Illinois corporation), Commercial Credit Corporation (formerly Commercial Credit Company, Inc., a Wisconsin corporation), Commercial Credit Corporation (a New Jersey Corporation), and Commercial Credit Corporation (formerly Commercial Credit Company, Inc., an Indiana corporation), in addition [fol. 222] to such portions as are indicated in the praecipe of the defendants, the following:

1. The official Court stenographer's transcript of the proceedings held on the Motion for Modification of Final Decree on December 21, 1940, a copy of which is annexed hereto, marked "A", and made a part of this document as fully as if it were here set forth in full.

2. This counter-praecipe and proof of service thereof.

Dated: February 21, 1941.

James R. Fleming, United States Attorney for the Northern District of Indiana, South Bend Division.

Washington, D. C.
February 21, 1941

I have this day served the attached counter-praecipe upon the defendants herein named, by mailing to their attorney of record a copy thereof, together with a notice of the filing of the same. Such service was made by mailing to said attorney, postage prepaid, the aforesaid copy and letter in an envelope addressed to Duane R. Dills, Esq., 100 East 42nd Street, New York, New York.

Edmond J. Ford, Special Assistant to the Attorney General.

Subscribed and sworn to before me this 21st day of February, 1941. Dorothy J. Heale, Notary Public. (Seal.)

[fols. 223-230] Clerk's Certificates to foregoing transcript omitted in printing.

[fol. 231] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1941

No. 40

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed April 8, 1941

Come now the Appellants in the above entitled cause and state that the points upon which they intend to rely in this Court in this case are as follows:

Point 1. The United States District Court for the Northern District of Indiana, erred in modifying the Consent Decree dated November 15, 1938, on the showing in this case.

Point 2. Said District Court erred in modifying said Consent Decree on motion without the acquiescence of the parties thereto and over the objection of the Appellants herein.

Point 3. Said District Court erred in failing to dismiss the motion for modification of said Consent Decree filed more than six (6) months after entry of said Consent Decree.

Point 4. Said District Court erred in enjoining the Appellants herein from acquiring and retaining ownership of, control over, or interest in any finance company until after January 1, 1942, in violation of the right expressly conceded and granted by the United States in Section 12 of the Con-[fol. 232] sent Decree dated November 15, 1938, which in substance provides: That in the absence of entry of final decree before January 1, 1941, requiring General Motors Corporation permanently to divest itself of ownership and control of General Motors Acceptance Corporation, the Appellants herein may apply for and obtain an order or decree that nothing in the Consent Decree precludes said Appellants from acquiring and retaining ownership or control over or interest in any finance company.

Point 5. Said District Court erred in failing to make findings of fact and state its conclusions of law.

Appellants further state that the whole of the record, as filed in this Court by said Appellants, with the exception of, and excluding, the stenographer's transcript of proceedings held on December 21, 1940, is deemed essential to the hearing of this case and is hereby designated to be printed by the Clerk.

Dated: April 8, 1941.

Nicholas Kelly, William Stanley, Attorneys for Appellants.

Service by Appellant of the above Statement of Points to be Relied Upon and Designation of the Parts of the Record to be Printed is hereby acknowledged by Appellee, this 8th day of April, 1941.

Francis Biddle, Solicitor General.

[fol. 233] [File endorsement omitted.]

[fol. 234] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1941

No. 40

COUNTER-DESIGNATION BY APPELLEE OF PARTS OF THE RECORD TO BE PRINTED—Filed April 14, 1941

To Charles Elmore Cropley, Clerk, United States Court:

Please take notice that the appellee designates as material parts of the record, in addition to those heretofore designated to be printed by the appellants, the court stenographer's transcript of the proceedings held on the Motion for Modification of Final Decree on December 21, 1940, and the counter-praecipe filed in the District Court for the Northern District of Indiana by the United States of America on February 21, 1941.

Francis Biddle, Solicitor General.

[fol. 235] District of Columbia:

James C. Wilson, being duly sworn, says that he is a Special Assistant to the Attorney General, Department of

Justice, Washington, D. C.; that on the 12th day of April, 1941, he served a copy of the foregoing counter-designation by appellees of parts of the record to be printed on William Stanley, 1626 K Street, N. W., Washington, D. C.

James C. Wilson.

Subscribed and sworn to before me this 12th day of April, 1941. Dorothy J. Heale, Notary Public. (Seal.)

[fol. 236] [File endorsement omitted.]

[fols. 237-238] In Supreme Court of the United States

No. 41

Statement of Points to be Relied Upon—Filed April 4, 1941

Commercial Credit Company (a Delaware corporation), Commercial Credit Corporation (a Pennsylvania corporation), Commercial Credit Corporation (an Iowa corporation), Commercial Credit Corporation (a Michigan corporation), Commercial Credit Corporation (a Minnesota corporation), Commercial Credit Corporation (a Missouri corporation), Commercial Credit Corporation (an Illinois corporation), Commercial Credit Corporation (a Wisconsin corporation), Commercial Credit Corporation (a New Jersey corporation) and Commercial Credit Corporation (an Indiana corporation) through their attorney adopt as their statement of points upon which they intend to rely as required by Paragraph Nine of Rule Thirteen of the rules of this Court, their Assignment of Errors filed with the Clerk of the District Court for the Northern District of Indiana, and included by her in the transcript of the record transmitted to this Court.

Duane R. Dills, Counsel.

Filed April 4th, 1941.

Service of the above Statement of Points to be Relied Upon by Appellants is hereby acknowledged by Appellee, this 4th day of April, 1941.

Francis Biddle, Solicitor General (A. I.), Attorney for Appellee.

[fols. 239-240] IN SUPREME COURT OF THE UNITED STATES

No. 41

DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed April 4, 1941

Commercial Credit Company (a Delaware corporation), Commercial Credit Corporation (a Pennsylvania corporation), Commercial Credit Corporation (an Iowa corporation), Commercial Credit Corporation (a Michigan corporation), Commercial Credit Corporation (a Minnesota corporation), Commercial Credit Corporation (a Missouri corporation), Commercial Credit Corporation (an Illinois corporation), Commercial Credit Corporation (a Wisconsin corporation), Commercial Credit Corporation (a New Jersey corporation) and Commercial Credit Corporation (an Indiana corporation) through their attorney hereby designate that the entire record on appeal as filed in this Court shall be printed with the exception of the court stenographer's transcript of the proceedings held on the Motion for Modification of Final Decree on December 21st, 1940, and the Counter-pr*ea*cipe filed in the District Court for the Northern District of Indiana by the United States of America on February 21st, 1941.

Duane R. Dills, Counsel.

Filed April 4th, 1941.

Service of the above Designation of Parts of the Record to be Printed by Appellant is hereby acknowledged by Appellee, this 4th day of April, 1941.

Francis Biddle, Solicitor General (A. I.), Attorney for Appellee.

[fol. 241] [File endorsement omitted.]

[fol. 242] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1941

No. 41

COUNTER-DESIGNATION BY APPELLEE OF PARTS OF THE RECORD TO BE PRINTED—Filed April 14, 1941

To Charles Elmore Cropley, Clerk, United States Supreme Court:

Please take notice that the appellee designates as material parts of the record, in addition to those heretofore

designated to be printed by the appellants, the court stenographer's transcript of the proceedings held on the Motion for Modification of Final Decree on December 21, 1940, and the counter-praecipe filed in the District Court for the Northern District of Indiana by the United States of America on February 21, 1941.

Francis Biddle, Solicitor General.

[fol. 243] District of Columbia:

James C. Wilson, being duly sworn, says that he is a Special Assistant to the Attorney General, Department of Justice, Washington, D. C.; that on the 12th day of April, 1941, he served a copy of the foregoing counter-designation by appellees of parts of the record to be printed on Duane R. Dills, counsel for appellant, by mailing a copy of said counter-designation to said Duane R. Dills at First National Bank Building, Baltimore, Maryland.

James C. Wilson.

Subscribed and sworn to before me this 12th day of April, 1941. Dorothy J. Heale, Notary Public. (Seal.)

[fol. 243½] [File endorsement omitted.]

[fol. 244] In Supreme Court of the United States, October Term, 1941

Nos. 40 and 41

Stipulation as to Record—Filed May 10, 1941

It Is Hereby Stipulated by and between the Appellants, Chrysler Corporation, De Soto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation, by their attorney, Nicholas Kelley, by the Appellants, Commercial Credit Company, (a Delaware corporation), Commercial Credit Corporation, (a Pennsylvania corporation), Commercial Credit Corporation, (an Iowa corporation), Commercial Credit Corporation, (a Michigan corporation), Commercial Credit Corporation, (a Minnesota corporation), Commercial Credit Corporation, (a Missouri corporation), Commercial Credit Corporation, (an Illinois corporation), Commercial Credit Corporation, (a Wisconsin corporation), Commercial Credit Corporation, (a New Jersey corporation), and Com-

mercial Credit Corporation, (an Indiana corporation), by their attorney, Duane R. Dills, and the United States of America, by its attorney, Holmes Baldridge, that in the above entitled appeals only one record need be printed, including therein all of the papers contained in each of the [fol. 245] two separate records but deleting therefrom the following parts of the record in No. 897 which duplicate the record in 870:

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Dated at Washington, D. C., this tenth day of May, 1941.
Nicholas Kelley, Attorney for Appellants, Chrysler Corporation, et al. Duane R. Dills, Attorney for Appellants, Commercial Credit Company, et al. Holmes Baldridge, Attorney for Respondent, United States of America.

[fol. 246] [File endorsement omitted.]

Endorsed on cover: File No. 45,219. N. Indiana, D. C. U. S. Term No. 40. Chrysler Corporation, De Soto Motor Corporation, Plymouth Motor Corporation, Appellants, vs. The United States of America. Filed March 25, 1941. Term No. 40, O. T., 1941.

Endorsed on cover: File No. 45,246. N. Indiana, D. C. U. S. Term No. 41. Commercial Credit Company, Commercial Credit Corporation, etc., et al., Appellants, vs. The United States of America. Filed March 28, 1941. Term No. 41, O. T., 1941.

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STATUTES CITED.

Expediting Act of February 11, 1903, Section 2, 32 Stat. 823, as amended (15 U. S. C. 29) 1, 2
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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA,
SOUTH BEND DIVISION

CIVIL No. 9

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CHRYSLER CORPORATION, ET AL.,
Defendants.

STATEMENT AS TO JURISDICTION.

In compliance with Rule 12 of the Supreme Court of the United States, as amended, Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation (hereinafter referred to as the appellants or the "Manufacturer") submit herewith their statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this case.

The basic question involves the authority of the trial court to modify an anti-trust consent decree over the objection of the defendants.

A. *Jurisdiction statute.*—The statutory provisions that confer jurisdiction upon this Court to review the decree of the District Court upon direct appeal are Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as

amended, 15 U. S. C. Sec. 29 and Section 238 of the Judicial Code, as amended, 28 U. S. C. Sec. 345. The direct appeal provided by these statutes is the sole mode of review available to appellants. The following cases sustain the jurisdiction of the Supreme Court:

Swift & Co. v. *United States,* 276 U. S. 311, 323;
United States v. *California Co-op. Canneries,* 279 U. S. 553, 558;
United States v. *Swift & Co.,* 286 U. S. 106, 109;
Ethyl Gasoline Corp. v. *United States,* 309 U. S. 436.

B. *Dates of decree and petition for appeal.*—The date of the final decree of the District Court here sought to be reviewed is December 21, 1940. It reads as follows (R. 54):

FINAL DECREE—IN MODIFICATION.

This matter came on to be heard by the Court on a motion of the United States for modification of the final decree, and the Court having heard argument of counsel and having considered the matter, and it having appeared to the Court that the allowance of such motion is just and equitable,

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the aforesaid final decree shall be and is hereby modified so that the second paragraph of Section 12 thereof shall read as follows:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1942, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over

or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that except as thus modified the decree as previously entered shall stand in full force and effect.

The date upon which application for appeal to this Court was presented to District Judge Thomas W. Slick was February 14, 1941, and Judge Slick allowed the application on February 14, 1941 (R. 56, 75-76).

C. *Statement.*—This is an appeal from a final decree of the District Court of the United States for the Northern District of Indiana, South Bend Division (R. 54-55), modifying an earlier final decree by the same court which had been entered with the consent of the parties in a suit in equity brought by the United States under Section 4 of the Sherman Anti-Trust Act of July 2, 1890, c. 647, 26 Stat. 209, as amended, 15 U. S. C. Sec. 4 (R. 37). The consent decree that the District Court thus attempted to modify restrained appellants, among other things, from acquiring any interest in any finance company, subject, however, to the condition that, if an effective final order should not have been entered before January 1, 1941, similarly requiring General Motors Corporation to divest itself of ownership of General Motors Acceptance Corporation, then nothing in the consent decree should preclude the Manufacturer from acquiring an interest in a finance company (See pp. 19-20 of the decree appearing at R. 37). The District Court by

the new decree attempted to extend the period of conditional restraint from January 1, 1941, to January 1, 1942, by changing the date in one paragraph of the original decree. Since the District Court did this without testimony, findings, conclusions, or an opinion, it is necessary to make a somewhat extended statement of the facts and questions presented.

Original proceedings.—On November 7, 1938, in the United States Court for the Northern District of Indiana, South Bend Division, the United States filed its complaint in equity against the Manufacturer, appellant herein, and against the Commercial Credit Company and certain wholly-owned subsidiaries of the Commercial Credit Company (R. 2-20). The bill, under Section 1 of the Sherman Act, alleged that Chrysler Corporation, together with these finance companies, had conspired to exclude all other finance companies from financing the sale of automobiles. The bill prayed, among other things, that Chrysler Corporation be restrained "from acquiring in any way an interest in any finance company or by gift, loan or otherwise rendering financial assistance to any finance company" (R. 18).

On the same day that the bill and answer (R. 22) filed there was submitted to the court a proposed consent decree, which was entered as the final decree of the court on November 15, 1938 (R. 37). Among other restraints and requirements imposed upon the defendant motor companies, the decree provided in Section 12:

> The Manufacturer shall not make any loan to or purchase the securities of Respondent Finance Company (that is, the Commercial Credit Company and its subsidiaries) or any other finance company • • •

However, it was also provided, in the next paragraph of the same section that:

It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a.

Proceedings against General Motors.—The United States had originally obtain three indictments—one against appellants herein and the finance companies with which it had been dealing, one against the Ford Motor Company and certain finance companies with which it had been dealing, and one against General Motors Corporation and its wholly owned finance company. Appellants herein consented to the equity decree quoted last above and the Ford Motor Company also consented to a similar decree, but General Motors declined. Accordingly, the Government quashed the indictments against Chrysler and Ford and Section 12 of the Chrysler consent decree and the corresponding section of the Ford decree were designed to protect them against prolonged disadvantage in competition with the non-consenting General Motors Corporation.

Subsequently in the criminal proceeding against General Motors on the indictment mentioned above the jury returned verdicts of guilty against General Motors Corporation and General Motors Acceptance Corporation; the court imposed sentence on November 17, 1939; and an appeal from

that judgment is now pending in the United States Circuit Court of Appeals for the Seventh Circuit.

Notwithstanding the express condition of the decree against appellants, the United States waited more than twenty months before it filed its bill in equity against General Motors Corporation and General Motors Acceptance Corporation to compel General Motors to divest itself of the Acceptance Corporation. Not until October 4, 1940, less than three months before the expiration of the period within which the United States had agreed to secure a decree against General Motors or release appellants from the restraint of Section 12, did the United States file its bill in equity in the District Court of the United States for the Northern District of Illinois, Eastern Division, seeking the result upon which continued restrain of appellants under Section 12 was predicated.

Present pleadings.—On December 17, 1940, the United States filed its "motion" for modification of the consent decree praying that in the second paragraph of Section 12 of the decree (as quoted above), the date "January 1, 1942" be substituted for "January 1, 1941" (R. 41-45). Attached thereto was an affidavit by a representative of the Department of Justice as to the truth of the statements in the motion (R. 46). In brief, the motion specifically asked for the extension of the restraint for one year, despite the decree provision to the contrary.

The answer of appellants denied the allegations of the motion of the United States and prayed (R. 48, 51):

> (1) That said motion be dismissed forthwith; or
>
> (2) That, if said motion be not dismissed, plaintiff be required to plead or elect with particularity (a) whether it relies upon mistake, surprise, inadvertence, or excusable neglect (if so, setting forth with certainty the facts upon which such claim is made) or (b) whether

it relies upon changed basic conditions of fact or law (if so, setting forth with particularity such changed conditions); and that defendants, thereafter, be given sufficient notice and opportunity to prepare its response and defense; or

(3) That, if said motion be not dismissed and if plaintiff is not required to plead further, the motion now filed herein be set down for hearing for the taking of proof on the merits, upon such terms and conditions as will assure defendants due notice of the issues and adequate opportunity to prepare its response or defense thereto.

Attached to this answer was the affidavit of counsel for the Manufacturer stating that he was present at substantially all of the conferences and negotiations at which the parties agreed upon the contents of the final decree and that the answer is true of his own knowledge (R. 52).

Action of the trial court.—Despite the fact that the Government had the burden of proof and that there was no waiver of proof by appellants, no evidence was submitted by the Government (R. 53). After hearing argument and without ruling on the prayers of appellants' answer, the court on the same day, December 21, 1940, made its "Final Decree—in Modification" directing the changing of the date in the second paragraph of Section 12 of the decree to "January 1, 1942" as requested by the Government (R. 54-55). The court made no findings of fact and stated no conclusions of law. There was no opinion.

It thus appears that more than two years after entry of a final consent decree and contrary to the express provision of that decree as quoted above, to which it had consented, the United States has sought by mere motion to modify the decree in a substantial particular so as to extend for at least another year a substantial restraint upon the Manufacturer and subject it to a serious competitive disadvan-

tage, despite the fact that, on the face of the consent decree, it is clear that the extent of this disadvantage had been carefully measured and expressly limited in determining the agreed period of the restraint. The court, apparently without a qualm as to the question of its power in the circumstances or the extent of that power if it existed, summarily granted the request to modify and extend the consent decree despite the protest of the parties subject to the decree and without evidence or findings.

D. *Substantial nature of the questions presented.*—The failure of the court to make findings of fact or state its conclusions of law leaves entirely to speculation the theory and grounds upon which it proceeded. Particularly in an anti-trust case which comes to this Court by direct appeal, such findings and conclusions of law have been held to be essential to intelligent and orderly presentation and proper disposition of such an appeal. Federal Rules Civ. Proc. 52; *Interstate Circuit* v. *United States,* 304 U. S. 55, 56-57; *Railroad Commission* v. *Maxcy,* 281 U. S. 82, 83.

The so-called "motion" of the United States seems to seek the modified decree on the ground of mutual mistake of the parties. However, because the relief sought is that commonly sought by a supplemental bill, *Independent Coal & Coke Co.* v. *United States,* 274 U. S. 640, 647; *United States* v. *International Harvester Co.,* 274 U. S. 693, 703, the motion must be treated as in the nature of a supplemental bill or as an ancillary bill in the nature of a bill of review recognized in Rule 60(b)(1). Cf. *Perkins* v. *Hendryx,* 149 Fed. 526; *Central Hanaver Bank & Trust Co.* v. *Wardman Real. E. P.,* 31 F. Supp. 685, 687. Indeed, it seeks, as to the appellants herein, relief identical with that sought in the original bill which prayed that Chrysler Corporation be restrained "from acquiring in any way an interest in any finance company." Since the present motion of the

United States seeks an extended result which the parties subject to the original decree oppose, it is in the nature of an original bill so far as that result is concerned. It admitted of an answer and required proof to be taken and the facts ascertained. *Buffington* v. *Harvey,* 95 U. S. 99, 107; *Pacific Railroad Co.* v. *Ketchum,* 101 U. S. 289, 295; *Kaw Valley Drainage District* v. *Union Pac. R. Co.,* 163 Fed. 836, 837.

For this reason, the application of the United States may not be regarded as a motion under Rule 60(b) of the Federal Rules of Civil Procedure providing:

> On motion the court, upon such terms as are just, may relieve a party or his legal representative from a judgment, order, or proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect. The motion shall be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken.

Even were this Rule otherwise applicable, the pleading of the Government, not having been made within six months after the final decree was entered, may not be regarded as a motion under the Rule. *Sprague* v. *Ticonic National Bank,* 307 U. S. 161, 169, note 9; *Maryland Casualty Company* v. *Cox,* 104 F. (2d) 354, 357. Moreover, since the pleading filed by the Government, though labelled as such, was not properly a "motion", Rule 43(e) which provides for the disposition of motions upon mere affidavits is not applicable. Yet, the Government made no attempt to introduce evidence and the trial court required none.

Assuming for the moment that the trial court had jurisdiction or authority to reopen the consent decree in the circumstances here presented, in so far as the motion may have proceeded on the ground of change in conditions and since it was opposed and not consented to, a "definite factual showing of illegality" was required for the entry of

the new or modified decree. *Board of Trade* v. *United States,* 246 U. S. 231, 238; *Standard Oil Co.* v. *United States,* 283 U. S. 163, 179; *Appalachian Coals* v. *United States,* 288 U. S. 344, 377. Otherwise there is no warrant for the modifying order. And since the allegations of mutual mistake also are squarely denied, the United States had the burden of proof on that issue as well. The existence of the facts were issues in the case and it was necessary for the United States to establish them by substantial evidence in order to sustain its right to the relief sought.

But the court either proceeded without evidence or treated the affidavit of the Government as the evidence in the case. An affidavit, being purely *ex parte,* cannot be considered on the final hearing. *Cucullu* v. *Hernandez,* 103 U. S. 105. In either event, therefore, the court violated fundamental right and the rule entitling the parties to a trial of issues of fact, not upon hearsay, but upon the testimony of persons having first hand knowledge of the facts who are produced as witnesses and are subject to the test of cross-examination. *United States* v. *International Harvester Co.,* 274 U. S. 693, 703; *Hop Bitters Manuf'g Co.* v. *Warner,* 28 Fed. 577; *Hyman* v. *Pottberg's, Ex'rs.,* 101 F. (2d) 262; *Parrott Speed Fastener Corp.* v. *E. W. Carpenter Mfg. Co.,* 26 F. Supp. 622, 623; Cf. *Lare* v. *Harper & Bros.,* 36 Fed. 481, 483; *Vonherberg* v. *City of Seattle,* 20 F. (2d) 247, 248. Moreover, the affidavit of the Government, even if admissible, was clearly insubstantial, was sharply controverted, and failed to state facts upon which the modification and extension of the decree could be based.

Finally there is presented the question whether, as a matter of law, the trial court had authority in any event to modify, without the consent of the parties, a decree entered and based upon the consent of the parties—particularly when such modification relates to a provision of the original decree which appears upon its face to have been

the subject of special consideration and agreement by the Government as well as by the defendants. *United States* v. *International Harvester Co.*, 274 U. S. 693, 703.

E. *Conclusion.*—It is thus plain that this appeal is within the exclusive jurisdiction of this Court and involves the review of substantial errors of the court below.

Respectfully submitted,

PACKER, CRABILL, CRUMPACKER,
MAY, CARLISLE & BEAMER,
S. J. CRUMPACKER,
NICHOLAS KELLEY,
LARKIN, RATHBONE & PERRY,
WILLIAM STANLEY,
Attorneys for Appellants.

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA,
SOUTH BEND DIVISION

CIVIL NO. 9.

UNITED STATES OF AMERICA,
Plaintiff,

against

CHRYSLER CORPORATION, ET AL.,
Defendants.

STATEMENT AS TO JURISDICTION.

In compliance with Rule 12 of the Supreme Court of the United States, as amended, Commercial Credit Company (a Delaware corporation), Commercial Credit Corporation (formerly Commercial Credit Company, a Pennsylvania corporation), Commercial Credit Corporation (formerly Commercial Credit Company, an Iowa corporation), Commercial Credit Corporation (formerly Commercial Credit Company, a Michigan corporation), Commercial Credit Corporation (formerly Commercial Credit Company, a Minnesota corporation), Commercial Credit Corporation (formerly Commercial Credit Company, a Missouri corporation), Commercial Credit Corporation (formerly Commercial Credit Company, an Illinois corporation), Commercial Credit Corporation (formerly Commercial Credit

Company, Inc., a Wisconsin corporation), Commercial Credit Corporation (a New Jersey Corporation), and Commercial Credit Corporation (formerly Commercial Credit Company, Inc. an Indiana Corporation) submit herewith their statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this case.

The basic question involves the authority of the trial court to modify an anti-trust consent decree on motion over the objection of the defendants.

A. *Jurisdiction.*—The statutory provisions that confer jurisdiction upon the Supreme Court to review the decree of the District Court upon a direct appeal are Section 2 of the Expediting Act of February 11, 1903, Chapter 544, 32 Stat. 823, as amended, 15 U. S. C. 29 reading as follows:

> "Sec. 2. In every suit in equity pending or hereafter brought in any district court of the United States under any of said Acts,* wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the district court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof"

and Section 238 of the Judicial Code as amended, 43 Stat. 938, 28 U. S. C. 345, as follows:

> "A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following Acts or parts of Acts, and not otherwise:
>
> "(1) Section 2 of the Act of February 11, 1903, 'To expedite the hearing and determination' of certain suits brought by the United States under the antitrust or interstate commerce laws, and so forth."

---

* "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, Expediting Act, Sec. 1.

B. *Dates of Decree and Petition for Appeal.*—The date of the final decree of the District Court, entitled "Final Decree—In Modification", here sought to be reviewed, is December 21, 1940 (R. 41). The date upon which the petition for appeal to this Court was presented to District Judge Thomas W. Slick was February 17, 1941 and Judge Slick allowed the application on February 17, 1941 (R. 43).

C. *Statement.* This is an appeal from a final decree of the District Court of the United States for the Northern District of Indiana, South Bend Division, entitled "Final Decree—in Modification" and dated December 21, 1940 (R. 41), modifying an earlier final decree by the same court which had been entered on November 15, 1938 (R. 27) on the consent of the parties in a suit in equity brought by the United States (Complaint R. 2, Answer R. 18) under Sections 1-4 of the Sherman Anti-trust Act of July 2, 1890, Chapter 647, 26 Stat. 209, as amended, 15 U. S. C., Sections 1-4.

Paragraph 12 (R. 27, see pp. 19-20) of the original final decree contained provisions restraining these defendants from making certain payments to any automobile manufacturing company and correspondingly restraining automobile manufacturer defendants from obtaining payments or other things of value from finance companies, including these defendants. It also enjoined the automobile manufacturer defendants from making loans to or purchasing securities of these defendants and from entering into other prohibited transactions with these defendants. The second paragraph of paragraph 12 of this decree provided as follows:

> "It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not

subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order or modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted" (R. 27, see pp. 19-20).

By notice of motion dated December 17, 1940 (Notice R. 29, Motion R. 33) the United States asked the Court to modify this provision of the final decree which by its terms was made an express condition of the decree and by order dated December 21, 1940 (R. 41) the Court, on summary application, without the taking of testimony, granted the motion and signed the so-called "Final Decree—In Modification". The text of said "Final Decree—In Modification" is as follows:

"Final Decree—In Modification.

"This matter came on to be heard by the Court on a motion of the United States for modification of the final decree, and the Court having heard argument of counsel and having considered the matter, and it having appeared to the Court that the allowance of such motion is just and equitable,

"Now, Therefore, It Is Ordered, Adjudicated And Decreed that the aforesaid final decree shall be and is hereby modified so that the second paragraph of section 12 thereof shall read as follows:

"It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1942, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted.

"And It Is Further Ordered, Adjudicated and Decreed that accept as thus modified the decree as previously entered shall stand in full force and effect" (R. 41).

These defendants, therefore, have now had entered against them a final decree in a suit in equity brought in a District Court of the United States under the Act of July 2, 1890. From such a decree, by virtue of the statute hereinabove quoted, an appeal lies only to the Supreme Court of the United States. The cases so holding are: *Swift & Co.* v. *United States,* 276 U. S. 311, 323; *United States* v. *California Co-op. Canneries,* 279 U. S. 553, 558; *United States* v. *Swift & Co.,* 286 U. S. 106, 109; *Ethyl Gasoline Corp.* v. *United States* 309 U. S. 436.

The attention of the Court is particularly directed to the case of *Swift & Co.* v. *United States,* 276 U. S. 311, 323,

which is an exact precedent for the present appeal. In that case, an appeal was taken to the Supreme Court from a final decree overruling a motion to vacate a consent decree. That this Court has exclusive jurisdiction of an appeal of this nature must now be regarded as well settled in the light of the foregoing decisions.

D. *Opinions.* No opinion was delivered by the District Court either upon the entry of the original final decree or of the "Final Decree—In Modification" herein (R. 41).

Respectfully submitted,

DUANE R. DILLS,
PAUL M. BUTLER,
Attorneys for Defendants.

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No. 40

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

CHRYSLER CORPORATION, DESOTO MOTOR CORPORATION, PLYMOUTH MOTOR CORPORATION, DODGE BROTHERS CORPORATION, and CHRYSLER SALES CORPORATION, APPELLANTS

v.

THE UNITED STATES OF AMERICA

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA.

BRIEF FOR THE APPELLANTS

NICHOLAS KELLEY,
WILLIAM STANLEY,
CARL MCFARLAND,
Counsel for Appellants.

LARKIN, RATHBONE & PERRY,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No. 40

CHRYSLER CORPORATION, DESOTO MOTOR CORPORATION, PLYMOUTH MOTOR CORPORATION, DODGE BROTHERS CORPORATION, and CHRYSLER SALES CORPORATION, APPELLANTS

v.

THE UNITED STATES OF AMERICA

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA.

BRIEF FOR THE APPELLANTS

OPINIONS BELOW

The trial court delivered no opinion. It made no findings of fact or conclusions of law.

JURISDICTION

The decree of the district court was entered December 21, 1940 (R. 117-118). The appeal was allowed by the district judge for the Northern District of Indiana on February 14, 1941 (R. 121). The jurisdictional statement required by Rule 12 of this Court was filed March 25, 1941, and probable

jurisdiction was noted on April 14, 1941, under the provisions of the Expediting Act of February 11, 1903, c. 544, Sec. 2, 32 Stat. 823, as amended, 15 U. S. C. Sec. 29, and Section 238 of the Judicial Code, as amended, 28 U. S. C. Sec. 345.

QUESTIONS PRESENTED

Whether, the parties not consenting and the issues being controverted by the answer of defendants, the court below erred in modifying an antitrust consent decree by extending one of its restraints:

(1) Without taking or requiring proof;

(2) Without allegations or proof of changed conditions or unlawfulness under the Sherman Act;

(3) Upon bare allegations of mistake, particularly where they are obviously ill-founded upon the face of the decree;

(4) Upon a motion made long after the time prescribed by Rule 60 (b) within which it was apparently drawn; and

(5) Without requiring the filing of a supplemental complaint upon which the issues might have been specified, joined, and tried.

STATEMENT

This is an appeal from a final decree of the District Court of the United States for the Northern District of Indiana (R. 117-118), made in December, 1940, modifying a final decree of the same court theretofore entered with the consent of the parties in November, 1938, in a suit in equity instituted by the United States under the Sherman Antitrust Act (R. 29-53).

Original proceeding and decree.—On November 7, 1938, the United States filed its complaint, under Section 1 of the Sherman Act, against Chrysler Corporation and certain of its subsidiaries (hereinafter, for brevity, referred

to as Chrysler) and against Commercial Credit Company and certain of its subsidiaries (R. 1-14). The bill, among many other things, alleged that during the period of three years immediately preceding its filing, Chrysler, General Motors, and Ford had manufactured and sold approximately 90% of the automobiles manufactured in the United States, of which General Motors produced 7,000,000 automobiles while Chrysler and Ford had each produced 4,000,000 (R. 5); and that these three manufacturers had conspired separately with their respective affiliated finance companies (R. 8). There was no charge that Chrysler, Ford, or General Motors had conspired with each other. The bill prayed, among many other things, that Chrysler be restrained "from acquiring in any way an interest in any finance company or by gift, loan or otherwise rendering financial assistance to any finance company" (R. 13).

On the same day the answers of Chrysler and the Commercial Credit group were filed (R. 15, 24).

On November 15, 1938, the court entered a consent decree as the final decree of the court, reciting at the outset that (R. 29-30):

> The United States of America filed its petition herein on November 7, 1938; each of the respondents appeared and filed its answer to such petition, and asserted the truth of its answer and its innocence of any violation of law; the petitioner and the said respondents desire to avoid the expenses of a trial of the issues therein and the loss of time occasioned thereby; no testimony having been taken, each of the respondents consented to the entry of this decree without any findings of fact, upon condition that neither such consent nor this decree shall be considered as an admission or adjudication that it has violated any statute; and the United States of America by its counsel * * * consented to the entry of this decree and to each and every provision thereof, and * * * moved the court for this injunction.

The decree, among other restraints and requirements imposed upon Chrysler, provided in Section 12 that Chrysler (R. 46):

> shall not make any loan to or purchase the securities of Respondent Finance Company [the Commercial Credit Company and its subsidiaries] or any other finance company.

This restriction was limited, however, by the second paragraph of the same section:

> It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude [Chrysler] from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a.

The decree as a whole contains not only a broad and detailed injunction restraining Chrysler from doing certain acts but also conditionally limits the time during which the restraints are to continue. These conditions were, as is obvious from the face of the decree, inserted for the purpose of relieving Chrysler from the competitive disadvantage of the restraints if and to the extent that the Government should not succeed in imposing like or similar restraints upon General Motors within the times agreed upon in the

decree.[1] Paragraph 15 of the decree further protects Chrysler from competitive disadvantage from competitors other than General Motors and Ford if those other competitors become substantial (R. 50-52).

The subsequent motion of the United States.—On December 17, 1940, the United States filed its "motion" for modification of the consent decree (R. 54-58). In substance the motion alleged that, at the time of entry of the consent decree, the length of time required to procure a decree against General Motors Corporation "was by mistake of the parties underestimated" and that, on October 4, 1940 (more than two years after the entry of the consent decree and only three months before the expiration of the restriction of paragraph 12 thereof), the United States had "filed complaint * * * against General Motors * * * whereby it seeks the remedy referred to in" the express condition of paragraph 12 of the decree, "to wit, that General Motors * * * shall divest itself of all ownership and control of General Motors Acceptance Corporation and all interest therein."[2] The motion prayed that Section 12 of the consent decree be modified by substituting the date "January 1, 1942" for the date "January 1, 1941" and by adding a provision that:

> The modification of this decree shall not preclude the plaintiff from seeking a further extension of the time within which the aforesaid decree may be entered.

[1] In 1938 General Motors Acceptance Corporation, the wholly-owned finance company subsidiary of General Motors Corporation, realized a net income of $12,000,000. *United States* v. *General Motors Corporation*, 121 F. (2d) 376, 386.

[2] In the criminal proceedings, which had been instituted against General Motors Corporation and its affiliated corporations prior to the Chrysler decree, the jury returned a verdict acquitting all of the individual defendants and finding the four corporate defendants guilty. Judgment was entered November 18, 1939. The Circuit Court of Appeals for the Seventh Circuit affirmed on May 1, 1941, and denied a petition for rehearing on July 2, 1941. *United States* v. *General Motors Corporation*, 121 F. (2d) 376. A petition for certiorari was filed August 8, 1941, No. 352, October Term, 1941.

An affidavit of a representative of the Department of Justice, attached to the motion, averred that it was based on original documents and facts learned in his handling of the matters referred to (R. 58).

The answer of appellants denied the allegations of the motion and prayed (R. 59-61):

> (1) That said motion be dismissed forthwith; or
>
> (2) That, if said motion be not dismissed, plaintiff be required to plead or elect with particularity (a) whether it relies upon mistake, surprise, inadvertence, or excusable neglect (if so, setting forth with certainty the facts upon which such claim is made) or (b) whether it relies upon changed basic conditions of fact or law (if so, setting forth with particularity such changed conditions); and that defendants, thereafter, be given sufficient notice and opportunity to prepare [their] response and defense; or
>
> (3) That, if said motion be not dismissed and if plaintiff is not required to plead further, the motion now filed herein be set down for hearing for the taking of proof on the merits, upon such terms and conditions as will assure defendants due notice of the issues and adequate opportunity to prepare [their] response or defense thereto.

The truth of the statements in the answer was supported by affidavit of counsel for Chrysler (R. 61-62).

The Government's motion was set for December 21, 1940 (R. 54). At that time, counsel for appellants renewed the contention that the Government must show on what basis it grounded its asserted right to open the decree (R. 103). The question being put to counsel for the United States, he answered (R. 103):

> Well, if your Honor please, if you ask me the straight question what I am relying on, I am relying on the good judgment of the court to correct an injustice.

Now, I don't believe that I should make any further contention in this case.

As is shown by the caption of the Clerk to the decree of the District Court, omitted in printing, no evidence was required by the court below or presented by the Government (Original R. 182). After argument and without ruling on the prayers contained in appellants' answer, the court below granted the motion from the bench (R. 117), and, on the same day, December 21, 1940, made its order of modification of the final decree, thereby directing the changing of the date in the second paragraph of Section 12 of the consent decree to "January 1, 1942" as requested by the Government (R. 117-118). The court made no findings of fact and stated no conclusions of law. There was no opinion.

SPECIFICATION OF ERRORS

1. The United States District Court for the Northern District of Indiana erred in modifying the consent decree dated November 15, 1938, on the showing in this case.

2. Said District Court erred in modifying said consent decree on motion without the acquiescence of the parties thereto and over the objection of the appellants herein.

3. Said District Court erred in failing to dismiss the motion for modification of said consent decree filed more than six (6) months after entry of said consent decree.

4. Said District Court erred in enjoining the appellants herein from acquiring and retaining ownership of, control over, or interest in any finance company until after January 1, 1942, in violation of the right expressly conceded by the United States and granted in Section 12 of the consent decree, dated November 15, 1938.

5. Said District Court erred in failing to make findings of fact and state its conclusions of law.

ARGUMENT

I

THE GRANTING OF THE INJUNCTIVE RELIEF TO THE GOVERNMENT WITHOUT INTRODUCTION OF ANY SUPPORTING EVIDENCE WAS CLEARLY VIOLATIVE OF DUE PROCESS

The motion of the United States is far from clear as to the basis upon which relief is sought (R. 56-58). Indeed, as pointed out above, counsel for the Government, who had apparently prepared the motion, was not certain what his ground was—other than that he was invoking "the good judgment of the court" to correct an asserted injustice (R. 103). As was indicated in the answer, appellants believed it might have been intended to allege either mistake or a change in conditions (R. 59-61).

Regardless of the nature of the ground for relief which the United States may finally settle upon as being the basis of its motion, it is plain that, after denial by answer, the Government, as the moving party asserting the affirmative of the issue, ~~sustained~~ had the burden of proving all the facts necessary to establish the right to the imposition or extension of the injunction against Chrysler. *Young* v. *Grundy*, 6 Cr. 51; *Lilienthal's Tobacco* v. *United States*, 97 U. S. 237, 267; *Henderson* v. *Carbondale Coal and Coke Co.*, 140 U. S. 25.

Here no evidence was offered by the Government (Original R. 182). The only support for the motion was the affidavit of counsel. But it is well settled that an affidavit being purely *ex parte* cannot be considered on final hearing. *Cucullu* v. *Hernandez*, 103 U. S. 105, 110. The defendants were entitled as a matter of fundamental right to a trial of the issues of fact with opportunity to cross-examine. *United States* v. *Int. Harvester Co.*, 274 U. S. 693, 703; *Hop Bitters Manuf'g Co.* v. *Warner*, 28 Fed. 577; *Hyman* v. *Pottberg's Ex'rs*, 101 F. (2d) 262, 265-266; *Parrot Speed*

Fastener Corp. v. *E. W. Carpenter Mfg. Co.*, 26 Fed. Supp. 622, 623; *Vonherberg* v. *City of Seattle*, 20 F. (2d) 247, 248.

To treat the affidavit as substantive evidence upon the questions of fact involved, as this Court has said in *United States* v. *Int. Harvester Co.*, 274 U. S. 693, 703:

> violates the fundamental rules of evidence entitling the parties to a trial of issues of fact, not upon hearsay, but upon the testimony of persons having first hand knowledge of the facts, who are produced as witnesses and are subject to the test of cross-examination.

There was, clearly, no proof submitted by the Government.

The court below itself at first apparently recognized that the granting of injunctive relief without evidence was beyond its power (R. 106-107), but thereafter—without indicating a reason for the change of mind—granted the Government's request without proof. Whatever the cause for this plain attempt to dispense with one of the cornerstones of due process, the error is so apparent as to make further argument superfluous.

II

THE GOVERNMENT HAS NEITHER ALLEGED NOR PROVED FACTS REQUISITE TO JUSTIFY THE EXTENSION OR MODIFICATION OF THE DECREE

It is plain that no change in condition is alleged to have occurred which would justify the imposition or extension of the restraint upon Chrysler. All that appears is that the Government has failed to comply with the "express condition" (R. 46) and specific terms of the decree. This is not such a change in condition as will support the modification, extension, or imposition of injunctive restraint. The Government, if it contended that this were such a change in condition, would be avoiding and making capital of its own default and failure.

In *United States* v. *Swift & Co.*, 286 U. S. 106, 119-120, this Court said:

> Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead

> us to change what was decreed after years of litigation with the consent of all concerned. * * * What was then solemnly adjudged as a final composition of an historic litigation will not lightly be undone * * * and the composition held for nothing.

When applied to an attempt to modify a consent decree so as to enlarge the restraints, it is submitted that the "grievous wrong" contemplated by the above-quoted language of the *Swift* case, requires, at the very least, a showing, independently of the conduct previously restrained and abandoned by consent of the parties defendant, that the new restraint sought to be imposed is necessary in order to prevent an existing or threatened violation of law.

It is important to note that the ownership, control, or interest in finance companies is only one of the many activities of Chrysler enjoined by the decree (Decree, Pars. 6 and 9, R. 32-43). An activity (such as the ownership or control of finance companies) initially enjoined because deemed to be an adjunct of other unlawful activities may, of course, be in itself entirely valid and so be permitted to be resumed after the passage of a period of time during which such other unlawful and perpetually enjoined activities have been abandoned. It is recognized also that restraints which could not be enforced against opposition may by consent of the defendants become binding as part of a decree. *United States* v. *Swift & Co.*, 286 U. S. 106, 116-117. Indeed, the decree herein specifically recited that (R. 30):

> each of the respondents consented to the entry of this decree without any findings of fact, upon condition that neither such consent nor this decree shall be considered as an admission or adjudication that it has violated any statute.

Again, the decree, Section 12, second paragraph, plainly and expressly recognized that ownership by Chrysler of a

finance company after January 1, 1941, would not violate the Sherman Act, for the provision for removal of the restraint against ownership of a finance company upon the stated and express condition appearing in Section 12 is one for absolute termination rather than the mere suspension such as is conditionally provided as to another type of restraint in Section 12a(3). Therefore, the inclusion of this conditioned restraint in the original consent decree against ownership or control of finance companies affords no basis for assuming that such a prohibition is now necessary to avoid violation of law or that such a restrictive provision could have been, or now could be, sustained in court against opposition.

The law is well established that to justify invoking equity jurisdiction for the imposition of a restraint—whether by way of "modification" of an earlier consent decree or otherwise—a present or threatened violation of the antitrust laws must be alleged and shown. *Swift and Company* v. *United States,* 196 U. S. 375, 396; *United States* v. *United States Steel Corporation,* 223 Fed. 55, 59, aff'd *United States* v. *U. S. Steel Corp.,* 251 U. S. 417, 445; *Industrial Ass'n* v. *United States,* 268 U. S. 64, 84; *Standard Oil Co.* v. *United States,* 283 U. S. 163, 179; *Appalachian Coals, Inc.* v. *U. S.,* 288 U. S. 344, 377; *United States* v. *E. I. du Pont de Nemours & Co.,* 188 Fed. 127, 129, 130; *United States* v. *E. I. du Pont de Nemours & Co.,* 273 Fed. 869, 873; *Aluminum Co. of America* v. *Federal Trade Commission,* 299 Fed. 361, 363, 365, cert. denied 261 U. S. 616.

Clearly such facts have been neither alleged or shown here—much less has there been that "clear showing of grievous wrong" required by this Court in *United States* v. *Swift & Co., supra.* It is not even suggested that the original decree has not been complied with, that Chrysler now owns an interest in a finance company, that Chrysler is threatening to acquire such an interest, or has failed in

any other way to comply with the decree in all respects. Indeed, the court below, by reiterated statement, appeared to justify the extension of the restraint here complained of by the very fact that the defendants were not threatening to acquire such an interest (R. 89, 93, 100, 114, 115). In so doing the court in effect ruled that the mere filing of a motion for injunction, without allegation of any violation of law either present or threatened, operates to place upon the defendant the burden of showing that it will be hurt by the imposition (or extension) of the proposed (or expiring) restraint—a proposition so repugnant to the established rules of justice as to require no rebuttal here.

Under the circumstances of this case, no grievous wrong or threatened violation having been either alleged or proved, there was no power in the court, without consent of the defendants, to modify the decree. *Industrial Ass'n* v. *United States*, 268 U. S. 64, 84; *United States* v. *United States Steel Corporation*, 223 Fed. 55, 161, aff'd 251 U. S. 417; *United States* v. *E. I. du Pont de Nemours & Co.*, 188 Fed. 127, 129, 130. As pointed out by this Court in *United States* v. *Int. Harvester Co.*, 274 U. S. 693, 703, any attempt to modify the decree so as to impose upon the defendants requirements other than those essential to the establishment of lawful competitive conditions—

> would plainly be repugnant to the agreement approved by the court and embodied in the decree, which has become binding upon all parties, and upon which the [defendant] has in the exercise of good faith, been entitled to rely.

Finally, in order to avoid the foregoing state of the law, the Government by its motion alleges that the trial court has "by section numbered 18 of the aforesaid consent decree" retained jurisdiction for the purpose of modifying it "as justice may require" (R. 57). But this paragraph

clearly applies only to applications for modification made by "any respondent" or "the respondents" to meet "economic or competitive conditions" whether "new or unforeseen" (R. 52-53). The Government has misread, and can reap no benefit from the paragraph 18 which it cites. There is, of course, the usual reservation clause in paragraph 14 of the decree, which the Government does not refer to, and which does not contain the phrase "as justice may require" (R. 50); moreover, such a reservation adds nothing to the decree or rights of the Government since "if the reservation had been omitted, power there still would be by force of principles inherent in the jurisdiction of chancery" to modify the decree where it has been shown to have "been turned through changing circumstances into an instrument of wrong" (*United States* v. *Swift & Co.*, 286 U. S. 106, 114-115).

It is, therefore, plain that the motion fails utterly to allege any ground for the modification or extension of the decree, and the record discloses none.

III.

UPON THE FACE OF THE MOVING PAPERS, THE BARE ALLEGATIONS OF MISTAKE OF THE PARTIES ARE INSUFFICIENT TO JUSTIFY A MODIFICATION OF THE DECREE

The motion does not assert that the consent decree does not contain the true agreement of the parties or that it was intended by them that, despite the language of the decree, recognition of the right of Chrysler to invest in a finance company should await final determination of the General Motors suit, however long that determination might be delayed. Indeed, no such allegation could be made, and if made would be patently erroneous, in view of the unequivocal "express condition" (R. 46) of the decree to which the Government, with full knowledge of the facts, freely consented.

The unequivocal language of the consent decree was that (R. 46):

> If an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude [Chrysler] from acquiring and retaining ownership of and/or control over or interest in any finance company.

Diligence by the Government is neither relevant nor decisive. Nothing in the decree indicates that the Government was required to proceed at all against General Motors to compel it to divest itself of ownership and control of General Motors Acceptance Corporation. Nothing on the face of the decree requires the Government even to attempt to do so. The Government's motion sets forth various considerations which the Government appeared to believe more important than compliance with the express condition to which it had consented. It delayed more than two years before even bringing its civil proceeding against General Motors, by which alone it could have prevented the lapse of the restriction of Paragraph 12 of the decree.

Against the express language of the decree it is obviously irrelevant to allege, as the United States does in its motion, that at the time of the execution of the decree "it was then believed by the parties" that the case pertaining to General Motors could be more promptly disposed of, or that the time "was by mistake of the parties underestimated," or that "the parties hereto, at the time of the entering of the consent decree, anticipated that such criminal case would be disposed of without extensive and lengthy litigation" (R. 55).

Such allegations plainly fail to state a ground for relief when the agreement shows on its face that the alleged mis-

take relates to a matter which the contracting parties had in mind as doubtful and as to the happening of which they took the consequent risk. *Denver & S. L. Ry. Co.* v. *Moffatt Tunnel Improvement Dist.*, 35 F. (2d) 365, mod. 45 F. (2d) 715, cert. denied 283 U. S. 837; *Chicago & N. W. Ry. Co.*, v. *Wilcox*, 116 Fed. 913, 914; 5 Williston, Contracts (Rev. Ed.) § 1543, p. 4332.

Indeed, the very fact that the obtaining of a decree against General Motors before January 1, 1941, is referred to as an "express condition" (R. 46) clearly shows that the parties regarded that event as uncertain. Had the happening of the event before January 1, 1941, been relied upon by the parties as a certainty, then the apparent contingency would have been illusory, its character as a condition would have been destroyed, and the whole of paragraph two of Section 12 would have been unnecessary.

That, in framing the "express condition" set forth above, the parties dealt with matters peculiarly within the knowledge and competence of the Government itself is evident. In the first place, the Government was the moving party in the type of litigation contemplated by the express condition. It, and it alone, could bring the proceedings, and in large measure it controlled their procedural history. It had been conducting litigation under the Sherman Act, both civil and criminal, for fifty years and had a staff of experienced attorneys devoting their entire time to the subject. Accordingly, it cannot truthfully say that it mistook the time required—particularly in view of its long delay in filing a civil suit against General Motors and in view of the lack of any allegations of unusual or extraordinary delays beyond those encountered in antitrust litigation from day to day.

Moreover, the decree itself provides different conditions for terminating its various different restraints. Thus Section 12a (3) (i, ii, iii) of the decree (R. 48-49) differs sig-

nificantly from the express condition of Section 12 discussed above. Among other differences, Section 12a provides for "suspension" rather than absolute termination in the event equivalent relief against General Motors is not secured by the Government; it provides for such suspension on January 1, 1940, whereas it was agreed that the absolute termination under the express condition of Section 12 could not occur until a year later; and it recognizes a verdict of guilty in a criminal proceeding as being for some purposes equivalent relief against General Motors, whereas the express condition here involved requires a civil "final order or decree not subject to further review" (R. 48-49).

Obviously, both parties dealt with full knowledge of every factor of litigation which might affect the operation of the express condition of Section 12. But the allegations of the motion are insufficient as well for another reason. They fail to take into account the fact that the consent decree is a judicial act. *United States* v. *Swift & Co.*, 286 U. S. 106, 115. Since the decree is a determination by the court of the restraints necessary to prevent violation of law, it is obviously irrelevant that the parties may have been under a misapprehension as to the possible date of a future event. Any error of the court in determining the degree of restraint necessary to protect against future wrong was waived by the consent to the decree. *Nashville & Railway Co.* v. *United States*, 113 U. S. 261, 266; *Swift & Co.* v. *United States*, 276 U. S. 311, 324.

IV.

THE MOTION OF THE GOVERNMENT TO MODIFY THE DECREE WAS REQUIRED TO BE DISMISSED AS UNTIMELY UNDER RULE 60(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE

The motion, assuming for the moment that it was the proper mode of procedure, was apparently filed under the misapprehension that it was permissible under Rule 60(b), which reads:

> On motion the Court, upon such terms as are just, may relieve a party or his legal representative from a judgment, order, or proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect.

But the very next sentence of this rule provides:

> The motion shall be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken.

Here the final decree was taken or entered November 15, 1938 (R. 29). The "motion" was not filed until December 17, 1940 (R. 54), more than two years after the consent decree. Plainly, under the express provisions of Rule 60(b) the motion was required to be dismissed as out of time. *Cassell* v. *Barnes,* 1 F. R. D. 15; *Moran* v. *Moran,* 31 F. Supp. 227; *Nachod & United States S. Co., Inc.* v. *Automatic Signal Corp.,* 32 F. Supp. 588; *Maryland Casualty Company* v. *Cox,* 104 F. (2d) 354, 357.

V.

ASSUMING THAT IT HAS A RIGHT TO THE RELIEF IT SEEKS, THE GOVERNMENT HAS MISTAKEN ITS REMEDY AND, FOR ITS PURPOSE, MUST PROCEED BY SUPPLEMENTAL COMPLAINT

It is abundantly clear from the foregoing that no mistake of the parties is involved here. Indeed, the court below went so far as to say (R. 105-106):

> There is no claim that it [the consent decree] was made mistakenly or through error. * * * No, they are not relying on any mistake made, as I understand it.

The circumstances, the specific language of the decree, and the conduct of the Government all emphasize that there was, and could have been, no mistake of the parties.

So far as the motion of the Government may be said to be grounded upon a change in conditions, it is, of course, not within the language or purpose of Rule 60(b). Upon

a matter such as this, involving disputed change of basic matters of fact, a motion is plainly inappropriate. It was essential that the United States file a motion for leave to file a supplemental complaint under Federal Rule of Civil Procedure No. 15(d) in order that issues might properly be made and the case regularly heard and decided. *Osage Oil & Refining Co.* v. *Continental Oil Co.*, 34 F. (2d) 585, 589; *Kaw Valley Drainage Dist.* v. *Union Pac. R. Co.*, 163 Fed. 836, 837.

Rule 15 (d) provides that, as to the "transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented," a supplemental pleading may be filed, but then only upon motion for the consent of the court and "upon reasonable notice and upon such terms as are just" with provision for a responsive pleading where advisable. In the present case, no attempt was made by the court below or the Government to comply with these requirements.

The prejudicial error of the failure of the United States to proceed by supplemental complaint, as is customary in attempting to secure the relief it here desires, is illustrated by (1) the failure of the court below to require the Government as the moving party to adduce evidence upon material and controverted allegations, (2) the granting of injunctive relief without allegations or proof of changed conditions and unlawfulness warranting such relief, (3) the assumption of a "mistake of the parties" not tenable upon the record and insufficient to justify the removal of the "express condition" of the decree, (4) the inappropriateness and inapplicability of the Government's motion under the terms of Rule 60 (b) under which it was apparently drawn, and (5) the entry of the modification of the decree without findings or conclusions.

Indeed, the failure of the court below to make findings or conclusions emphasizes the fundamental error. It is the

concomitant of the failure to require proof in a contested cause. It leaves entirely to speculation the theory and grounds upon which the court below proceeded. Particularly in an antitrust case which comes to this Court by direct appeal, such findings and conclusions of law have been held to be essential to intelligent and orderly presentation and proper disposition of a case. Federal Rules Civ. Proc. 52; *Interstate Circuit* v. *United States,* 304 U. S. 55, 56-57; *Railroad Commission* v. *Maxcy,* 281 U. S. 82, 83.

Under these circumstances, the modification of the decree must be set aside and the Government required to proceed, if it desires to proceed, in accordance with recognized judicial methods which will accord the parties defendant their day in court.

CONCLUSION

It is respectfully submitted that the order of the District Court dated December 21, 1940, modifying the final consent decree should be reversed. The order was made and entered without testimony by the moving party, though the issues were sharply controverted; there was neither allegation nor proof of changed conditions and unlawfulness warranting modification of the decree; the allegations of mistake were neither sufficient nor were they proved; the motion was made long after the time for such motions had expired; and, in any event, the Government's remedy, if any, was by supplemental complaint rather than by mere motion.

Respectfully,

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WILLIAM STANLEY,
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LARKIN, RATHBONE & PERRY,
Of Counsel.

September, 1941.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 41

COMMERCIAL CREDIT COMPANY,
COMMERCIAL CREDIT CORPORATION, ETC.
ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA

Appellee.

Brief for Commercial Credit Company, Commercial Credit Corporation, Etc., Et Al.

OPINION BELOW

No opinion was delivered by the District Court either upon the entry of the original final decree or of the "Final Decree—In Modification." (R.117)

JURISDICTION

The statutory provisions that confer jurisdiction upon the Supreme Court to review the decree of the District Court upon a direct appeal are Section 2 of the Expediting Act of February 11, 1903, Chapter 544, 32 Stat. 823, as amended, 15 U.S.C. 29 reading as follows:

> "Sec. 2. In every suit in equity pending or hereafter brought in any district court of the United

> States under any of said Acts,* wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the district court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof"

and Section 238 of the Judicial Code as amended, 42 Stat. 938, 28 U. S. C. 345 as follows:

> "A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following Acts or parts of Acts, and not otherwise:
>
> "(1) Section 2 of the Act of February 11, 1903, 'To expedite the hearing and determination' of certain suits brought by the United States under the antitrust or interstate commerce laws, and so forth."

The right of these Appellants to appeal is discussed in the Statement as to Jurisdiction heretofore filed in compliance with Rule 12 of this court and this court has found that probable jurisdiction exists.

QUESTION PRESENTED

Whether the United States District Court, sitting in equity, has the power to revise or modify a consent decree in the absence of a showing of new and unforseen conditions arising since the entry of the original decree. The Assignment of Errors (R.125) and the points on which these Appellants rely (R.133) show in detail the basis for the proposition argued.

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*An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, Expediting Act, Sec. 1.

STATUTES INVOLVED

The statutes involved are Sections 1 to 4 of an Act to Protect Trade and Commerce against Unlawful Restraint and Monopolies, approved July 2, 1890 as amended. The sections involved are:

"1. Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade of commerce among the several States, or with foreign nations, is hereby declared to be illegal: Provided, That nothing herein contained shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title, as amended and supplemented: Provided further, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, and on conviction

thereof, shall be punished by fine not exceeding $5,000. or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. (As amended Aug. 17, 1937, c. 690, Title VIII, 50 Stat. 693).

2. Monopolizing trade a misdemeanor; penalty.

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding $5,000., or by imprisonment, not exceeding one year, or by both said punishments, in the discretion of the court. (July 2, 1890, c. 647, Para. 2, 26 Stat. 209).

3. Trusts in Territories or District of Columbia illegal; combination a misdemeanor.

Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. (July 2, 1890, c. 647, para. 3, 26 Stat. 209.)

4. Jurisdiction of courts; duty of district attorneys; procedure.

The several district courts of the United States

are invested with jurisdiction to prevent and restrain violations of sections 1 to 7, inclusive, or section 15 of this chapter; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. (July 2, 1890, c. 647, para. 4, 26 Stat. 209; Mar. 3, 1911, c. 231, para. 291, 36 Stat. 1167).

STATEMENT

This is an appeal from a final decree of the District Court of the United States for the Northern District of Indiana, South Bend Division, entitled "Final Decree—In Modification" dated December 21, 1940, modifying an earlier final decree by the same court which had been entered on November 15th, 1938 by consent of the parties in a suit in equity brought by the United States under Sections 1-4 of the Sherman Antitrust Act of July 2, 1890, Chapter 647, 26 Stat. 209, as amended, 15 U. S. C., Sections 1-4)

Paragraph 12 (R. 46) of the original final decree contained provisions restraining Appellants from making certain payments to any automobile manufacturing company and correspondingly restrained Chrysler Corporation, et al., (Appellants in Case No. 40) from obtaining payments or other things of value from finance companies, including these Appellants.

The second paragraph of Paragraph 12 of this decree provided as follows:

> "It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order or modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents, or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted" (R. 46)

By a motion dated December 17, 1940 (R. 54) the United States asked the court to modify this provision of the final decree which by its terms was made an express condition of the decree, and by order dated December 21, 1940 (R. 117) the court on summary application, without the taking of testimony, granted the motion and signed the Final Decree—In Modification. The text of said Final Decree—In Modification is as follows:

> "*Final Decree—In Modification.*"
>
> "This matter came on to be heard by the Court on a motion of the United States for modification of the final decree, and the Court having heard argument

of counsel and having considered the matter, and it having appeared to the Court that allowance of such motion is just and equitable,

"Now, Therefore, It Is Ordered, Adjudicated and Decreed that the aforesaid final decree shall be and is hereby modified so that the second paragraph of section 12 thereof shall read as follows:

" 'It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1942, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted.

" 'And It Is Further Ordered, Adjudicated and Decreed that except as thus modified the decree as previously entered shall stand in full force and effect" (R. 117, 118)

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

1. In making and entering the Final Decree—in Modification dated December 21, 1940.

2. In modifying the Final Decree dated November 15, 1938 without the acquiescence of the parties.

3. In failing to dismiss the motion for modification of the Final Decree.

4. In failing to make findings of fact and state conclusions of law.

SUMMARY OF ARGUMENT

I

The District Court, which, with the consent of all parties, entered a valid final decree enjoining the Appellants, has no power later to modify such decree unless there is definite proof clearly showing that such modification is legally proper and demanded by changed conditions, new and unforseen, arising after the entry of the original decree.

II

The conditions existing at the time of the entry of the original final decree have not changed.

ARGUMENT

I

United States vs. Swift & Company, et al., 286 U. S. 106, holds that federal District Courts exercising their equity jurisdiction have no authority to modify decrees entered by them, whether after litigation or by consent of the parties, unless the petitioner offers evidence that conditions have so changed since the entry of the original decree as to warrant the modification sought.

In the Swift Case, supra, this Court, in passing upon the power of the trial court to modify such a decree said at page 119:

> "There is need to keep in mind steadily the limits of inquiry proper to the case before us. We are not framing a decree. We are asking ourselves whether anything has happened that will justify us now in changing a decree. The injunction, whether right or wrong, is not subject to impeachment in its application to the conditions that existed at its making. We are not at liberty to reverse under the guise of readjusting. ***Nothing less than a clear showing of grievous wrong evoked by new and unforseen conditions should lead us to change what was decreed after years of litigation with the consent of all concerned."

In concluding its opinion in the Swift case the Court further said at page 120:

> "What was then solemnly adjudged as a final composition of an historic litigation will not lightly be undone at the suit of the offenders, and the composition held for nothing."

This principle was considered by the Court below, which questioned its authority to modify the decree without the taking of testimony. During the argument at the hearing, the Court expressed its doubt in the following manner:

> "The Court: Gentlemen, I wonder what authority the court has to take up a matter of this kind without a showing. There has been a petition filed, I take it, and a statement made by Mr. Ford as to the necessity for an extension of this order. Now, I am wondering whether, especially in view of the fact that counsel for the defense have challenged it, whether it must not of necessity be set down for a hearing and the taking of testimony, either by affidavit or oral testimony, as to the necessities. My suggestion before lunch was made with the hope that there might be

some way of counsel agreeing to the partial—to a continuance for a partial granting at least of what the Government is asking. I thought perhaps that you could agree that the order might be continued for one year, leaving it open then for application to be made at the expiration of a year, if it was thought that one side or the other is entitled to some relief, but if you don't want to agree to anything I think we will just absolutely have to set it down. I doubt very much—have you examined the authorities, Mr. Ford, on the right of the court to extend a provision of this kind?" (R. 106, 107)

That a decree should not be modified upon a mere motion supported only by affidavit and that evidence of changed conditions must be introduced to support such a motion is clear under the decision of this Court in the case of the *United States vs. International Harvester Company*, 274 U. S. 693, wherein the United States unsuccessfully sought the modification of a decree entered against the Harvester Company. In that case the United States attempted to show that the Harvester Company had not complied with the original decree ordering it to restore competitive conditions, by offering in evidence a report of the Federal Trade Commission unsupported by direct testimony bearing upon the contents of the report. In discussing the evidence introduced the Court said, at page 703:

"In support of its alternative contention that competitive conditions have not been established bringing about a situation in harmony with law, the Government relies in large measure upon various statements and tabulations contained in the report of the Federal Trade Commission, which was introduced in evidence over the objection of the International Company. But it is entirely plain that to treat the statements in this report—based upon an *ex parte* investigation and formulated in the manner hereinabove set forth—as constituting in

themselves substantive evidence upon the questions of fact here involved, violates the fundamental rules of evidence entitling the parties to a trial of issues of fact, not upon heresay, but upon the testimony of persons having first hand knowledge of the facts, who are produced as witnesses and are subject to the test of cross-examination***."

Similarly Appellants were entitled in the Court below to a hearing at which they could cross-examine witnesses produced by the United States in support of its motion to modify and might in turn introduce evidence to show that there had been no change in conditions since the entry of the original final decree.

It is clear therefore, that in a proceeding to modify a decree, whether entered at the close of a contested case or on consent of the parties, the burden is on the petitioner to establish that the continuance of the provisions of the decree sought to be modified would be inequitable and oppressive in view of changed conditions and the showing must be on proper proof. This the United States has not done. No evidence was introduced and no testimony taken. The Court below modified the original decree solely on the allegations contained in the motion to modify and the argument of counsel.

II

In the instant case there was no showing in the lower court of any change in conditions which would warrant a modification of the restraint included in paragraph 12 of the original final decree. The United States is not seeking to modify the instant decree because of any change in circumstances.

The decree restrained Chrysler Corporation et al (Appellants in Case No. 40) from doing certain things until January 1, 1941. Within a few days of the time

when the injunction would be lifted by reason of the passage of time, the United States sought to extend that time, not because of changed conditions, but simply because a final decree had not been entered against General Motors as provided in the original final decree.

There is some faint trace in the motion for modification (R. 55) and argument by counsel for the United States (R. 106, 112) that the parties to the consent decree erroneously miscalculated that the General Motors case would be disposed of quickly—that a mistake was made in setting the date for the lifting of the restraint.

It is problematical what was in the mind of counsel for the United States at the time when the date of January 1, 1941 was agreed upon. Certainly, there is no evidence at all that counsel for Chrysler Corporation and for Commercial Credit Company and their associates were under any misapprehension when they agreed to that date. The date was deliberately chosen and marked a definite period during which the Appellants agreed to the restraint of the original final decree despite the fact that General Motors Corporation, a competitor, was under no similar restraint during that time. It is submitted that when a time limit is deliberately set for the happening of an event, its failure to occur within the period is not a change in conditions which would warrant the Court in modifying the original final decree by extending the date at the suit of one party over the objection of the other. The situation is far different from that which exists when there are true economic and social changes, such as were involved in the *Swift* case.

The United States is in effect contending that the original final decree restrained the Appellants for too short a time and that the modification of the decree will correct this situation. In an earlier case also involving

Swift & Company, in which that Corporation unsuccessfully sought to vacate a consent decree entered against it, on the ground that the decree was too broad in scope, this Court observed (*Swift & Company et al vs. United States*, 276 U. S. 311 at page 331):

> "The power to enjoin includes the power to enjoin too much."

A fortiori, if the court has the power to enjoin too much, it has the power to enjoin too little, and the original decree, in the absence of a showing of changed conditions, should stand although the United States has now become dissatisfied with the period of the restraint. If counsel for the United States made a miscalculation in agreeing to the date set in Paragraph "12" of the original decree, that fact is not sufficient ground upon which to base a modification of the decree. Again in the earlier *Swift* case, the Court said, at page 331:

> "His authority (the Attorney-General) to make determinations includes the power to make erroneous decisions as well as correct ones."

However, there is no evidence at all that counsel for the United States made a miscalculation. The United States delayed for two years after the entry of the original decree in the instant case in filing a bill of complaint against General Motors (R. 79, 113) to accomplish what it desired in connection with that corporation. It would appear that delay upon the part of the United States, rather than miscalculation of time, has caused its present dissatisfaction with the restraint imposed by Paragraph 12.

CONCLUSION

The decree appealed from should be revised insofar as it modified the original final decree and the motion should be ordered dismissed with costs to the Appellants.

Respectfully submitted,

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W. RUSSELL MULES
Counsel for Appellants.

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In the Supreme Court of the United States

OCTOBER TERM, 1941

Nos. 40 and 41

CHRYSLER CORPORATION, DE SOTO MOTOR CORPORATION, PLYMOUTH MOTOR CORPORATION, APPELLANTS

v.

THE UNITED STATES OF AMERICA

COMMERCIAL CREDIT COMPANY, COMMERCIAL CREDIT CORPORATION, ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The district court did not render any opinion.

JURISDICTION

The decree of the district court was entered on December 21, 1940 (R. 117). Petitions for appeal

were filed on February 14, 1941, and were allowed in No. 40 on the same day and in No. 41 on February 17, 1941 (R. 118, 121, 125, 127).

The jurisdiction of this Court is conferred by section 2 of the Act of February 11, 1903, 32 Stat. 823, 52 U. S. C., section 29, and section 238 of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 931, 936, 28 U. S. C., sec. 345.

QUESTIONS PRESENTED

1. Whether the facts before the district court warranted its order modifying the consent decree.

2. Whether there were any disputed, relevant factual issues before the district court which required it to hear testimony before acting upon the Government's motion for modification of the consent decree.

3. Whether the pleadings are fatally defective because the Government's application for modification of the decree was in the form of a motion.

4. A question not directly presented by appellants which this Court may wish to consider is whether the case should be remanded to the district court because of its failure to make findings or to state its conclusions of law.

STATUTE INVOLVED

The Act of July 2, 1890, 26 Stat. 209, known as the Sherman Act, as amended by the Act of August 17, 1937, 50 Stat. 693, provides in part as follows:

SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal * * *. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor * * * (15 U. S. C., Supp V, sec. 1).

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor * * * (15 U. S. C., sec. 2).

* * * * *

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. * * *

STATEMENT

These are separate appeals by Chrysler Corporation and certain of its subsidiaries (No. 40) and by Commercial Credit Company and certain of its

subsidiaries (No. 41) from an order of the district court modifying a decree entered against appellants with their consent on November 15, 1938, in an equity proceeding brought against them by the United States charging violations of the Sherman Act.

The modification in the decree requested by the Government.—The decree, in addition to numerous other prohibitions, provides that Chrysler Corporation (referred to herein as Chrysler) "shall not make any loan to or purchase the securities of" any finance company [1] (R. 46). Following this prohibition (¶12, first paragraph), the decree provides that if an effective final decree shall not have been entered by January 1, 1941, requiring General Motors Corporation to divest itself of all ownership and control of General Motors Acceptance Corporation, its subsidiary finance company, the decree shall not preclude Chrysler from acquiring control over or an interest in any finance company. This provision (¶12, second paragraph) reads (R. 46–47):

> It is an express condition of this decree that notwithstanding the provisions of the preceding paragraph of this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been en-

[1] The decree defines "finance company" to mean a company engaged in financing the purchase of automobiles either by dealers or by retail purchasers (R. 31).

> tered on or before January 1, 1941, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then and in that event, nothing in this decree shall preclude the Manufacturer [Chrysler] from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a.

On December 17, 1940, the Government filed a motion verified by affidavit requesting that the consent decree be modified by changing the date in the second paragraph of ¶12 from January 1, 1941, to January 1, 1942 (R. 54). The present appeals are from the order of the court making this change in the decree.

Authorization for the Government's motion is to be found in ¶14 of the decree, which provides that the court retains jurisdiction of the cause "for the purpose of enabling any of the parties to this decree to make application to the court at any time * * * for the modification" of the decree (R. 50).

The issues presented to this Court must be considered in the light of the objective of the provision of the decree which the Government sought to have changed. Determination of this objective

requires consideration of certain related proceedings in the court below against appellants and others, the charges made in the bill of complaint filed against appellants, and the general scope and structure of the decree entered against them.

Related Judicial Proceedings in the Court Below.—Three indictments were returned in the court below on May 27, 1938, one against appellants, one against Ford Motor Company and certain finance companies affiliated with it, and the third against General Motors and General Motors Acceptance Corporation (referred to herein as GMAC).[2] Each charged a conspiracy to restrain interstate commerce in automobiles produced by the defendant manufacturer by excluding as far as possible all finance companies other than its affiliate from the business of financing such interstate commerce.[3] Each also charged that the manufacturer had, as a part of such conspiracy, given special services, facilities, and preferences to its

[2] Since a court may take judicial notice of its own records (*United States* v. *California Cooperative Canneries*, 279 U. S. 553, 555; *Aspen Mining & Smelting Co.* v. *Billings*, 150 U. S. 31, 38), the above proceedings were within the judicial notice of the district court.

[3] The indictment against appellants charged affiliation between Chrysler and Commercial Credit and a like charge is made in the bill of complaint on which the consent decree rests (R. 6). Chrysler, as a result of the negotiations leading to entry of the consent decree, severed this affiliation prior to entry of the decree by disposing of its stock interest in Commercial Credit and by canceling a preferential contract with it (R. 19–20, 88–89).

affiliated finance company and had coerced its dealers to use the services of the affiliate.

After the Chrysler and the Ford defendants had agreed to the entry of decrees satisfactory to the Government, it filed a bill in equity against appellants on November 7, 1938 (R. 1). On the same day appellants filed their answers and a form of consent decree was presented which, after a hearing, was entered on November 15, 1938 (R. 15, 24, 29–30, 109).[4]

Charges in the Bill Filed Against Appellants.— The bill filed against appellants charges that General Motors, Chrysler, and Ford produce about 90% of all the automobiles manufactured in this country, that each markets its cars in the same manner, that financing is essential to such marketing, and that each has engaged in a parallel, though separate, conspiracy with its affiliated finance company to exclude other finance companies from the business of financing its cars in interstate commerce (R. 4–8). The bill alleges, among other things:

Each of these three manufacturers sells its cars to dealers, and through them to the general public, and requires cash payment, prior to delivery, for all cars sold (R. 5–6). The great majority of the dealers must resort to finance companies to obtain

[4] Substantially the same bill was filed, and the same decree was entered, against the Ford group of defendants, on the same respective dates.

the funds required for these advance cash payments and finance companies likewise supply the funds for retail purchasers when they buy, as they usually do, partly on credit (R. 6–7). During the last three years such financing has amounted to about $5,500,000,000 in the case of dealer purchases and to about $6,000,000,000 in the case of retail purchases (R. 7–8). Although there are some 375 independent finance companies, the finance affiliates of the Big Three have obtained over 80% of the business of financing both dealer and retail purchases (*ibid.*).

The bill also charges that, for the purpose of effecting the conspiracy in which appellants were engaged, Chrysler had used various specified means of coercion to compel its dealers to use the services of Commercial Credit and had granted that concern favors and privileges denied to other finance companies (R. 8–12).

The Scope and Structure of the Consent Decree.—The prohibitions of the decree directed against Chrysler are found in paragraphs 6 and 12. Paragraph 12, as previously stated (*supra,* p. 4), bars it from acquiring any interest in a finance company. Paragraph 6 contains detailed prohibitions against coercing dealers to use the services of any particular finance company and against itself granting special favors to any such company (R. 32–35, 43). The paragraph provides, however, that Chrysler may grant certain advan-

tages to any "registered finance company" (R. 33–34, 41–42). Subparagraph (j) authorizes any finance company to become "registered" by filing with the court in the equity proceeding against appellants a statement that it will conform to the detailed rules for conducting its business set forth therein (R. 35–40).

Paragraph 7 imposes certain inhibitions upon Commercial Credit which are correlative to some of those imposed upon Chrysler (R. 43–44).

A striking feature of the decree is that, while all the foregoing prohibitions are presently effective, their ultimately binding effect is made dependent upon the outcome of the Government's proceedings against General Motors. The decree provides (¶12a (1)) that if the criminal proceeding instituted against General Motors and GMAC on May 27, 1938, does not terminate in their conviction, "every" provision of the decree shall be forthwith suspended until such time as substantially identical requirements shall be imposed by decree upon General Motors and GMAC (R. 47). The decree also provides (¶12a (2), (3)) that following such conviction, or following entry of a decree against General Motors not subject to further review, or on January 1, 1940, whichever is earliest, appellants are entitled to obtain a suspension of every requirement of paragraphs 6 and 7 to the extent that it is not then imposed by

decree upon General Motors or GMAC (R. 47–49).[5] For the purposes of this provision any agreement, act, or practice which the trial court in the criminal proceeding has held, in its instructions to the jury, to constitute a proper basis for a verdict of guilty shall, after such a verdict, be deemed "the equivalent of a decree" (R. 47–48).

Thus the decree not only provides that *all* of its prohibitions are to be suspended if General Motors and GMAC are not convicted in the criminal proceeding, but it gives appellants certain additional rights both as to the prohibitions of paragraphs 6 and 7 and as to the prohibition against affiliation in paragraph 12 (*supra*, p. 4) unless proceedings by the Government against General Motors are successfully concluded by specified dates.

Motion for Modification and Proceedings thereon.—The Government in its motion to have the date in ¶ 12, relating to the termination of the civil proceedings brought against General Motors, changed from January 1, 1941, to January 1, 1942,[6] set forth that numerous preliminary and inter-

[5] As to subparagraphs (a), (b), (c), and (g) of ¶6 and subparagraph (b) of ¶7, the right to obtain such suspension is qualified by the further requirement that appellants show to the satisfaction of the court that General Motors (or GMAC) is performing some agreement, act, or practice prohibited thereunder (R. 48–49).

[6] The Ford defendants had previously consented to this change in the consent decree entered against them (R. 67–68).

locutory proceedings had caused unexpected delay in trial of the criminal proceeding against General Motors; that judgments of conviction of General Motors and GMAC had been entered in November 1939 and that an appeal therefrom was pending;[7] that final disposition of this appeal will shorten and simplify trial of the civil proceeding to compel General Motors to divest itself of its GMAC stock and will avoid unnecessary expense and a needless retrial of the same issues in that proceeding; that on October 4, 1940, the United States had instituted a suit against General Motors to compel divestment of its GMAC stock, and will diligently prosecute this proceeding but that it cannot be terminated by January 1, 1941 (R. 55–58).

Chrysler filed an answer denying certain allegations of the Government's motion and praying that, in the alternative, (1) the motion be forthwith dismissed; (2) the United States be required to elect whether it relies upon "mistake" or upon "changed basic conditions"; or (3) the motion be set down for hearing for the taking of proof (R. 59–61).

The district court, after hearing counsel for both parties, concluded that the relief which the Government sought should be granted.

---

[7] The Circuit Court of Appeals affirmed these convictions on May 1, 1941, *United States* v. *General Motors Corp.*, 121 F. (2d) 376 (C. C. A. 7). A petition for certiorari to review this decision is now pending before this Court (No. 352, this Term).

SUMMARY OF ARGUMENT

I. The consent decree is framed upon the basis that the ultimate rights of the parties thereunder shall be determined by the outcome of the Government's criminal and civil antitrust proceedings against General Motors. To safeguard appellants against undue delay in such litigation, the decree provided for suspension of its prohibitions if convictions were not obtained in the criminal case by January 1, 1940, and for lapse of the bar against affiliation if the civil proceeding were not successfully concluded by January 1, 1941. The district court was warranted in concluding that the primary purpose of the affiliation provisions was to have the bar against affiliation abide the outcome of the civil proceeding against General Motors and that the court should give effect to this purpose by preventing it from lapsing prior to determination of such proceeding. The fact that termination of this bar would seriously impair the effective operation of the other prohibitions of the decree was a further supporting consideration. Appellants, on their part, neither showed nor offered to show that they would be injured by continuance of this bar.

II. The facts bearing upon the question whether the Government had or had not been unduly dilatory in prosecuting the General Motors litigation were not in dispute and they were also within the district court's judicial notice. Insofar as

the motion for modification raised a question as to the primary purpose of the affiliation provisions of the decree, this question was to be determined by the court from the four corners of the decree, read in the light of the allegations of the bill of complaint upon which the decree rested. Accordingly, to have set the case down for the taking of evidence would have been an empty formality and the failure to do so does not constitute an abuse of discretion warranting reversal.

III. The application for modification of the decree was properly made by motion. The only substantive difference between proceeding by motion and proceeding by supplemental complaint is that in the latter proceeding permission for filing must be obtained from the court. But since the consent decree expressly authorized any party to apply at any time for modification, permission for filing was not required whether the application for modification was designated a motion or a supplemental complaint.

ARGUMENT

I

THE FACTS BEFORE THE DISTRICT COURT WARRANTED ITS ORDER MODIFYING THE CONSENT DECREE

The Government concedes that any party requesting modification of a consent decree entered in a proceeding under the Sherman Act must affirmatively show grounds for making the requested

change, but it contends that the extent and character of the showing required depend upon the nature of the change which is sought and all the other relevant circumstances in the particular case. If, as in *United States* v. *Swift & Co.*, 286 U. S. 106, the modification which is requested is that one of the major prohibitions imposed by the decree shall be eliminated, relief will be denied unless it is shown that conditions have so changed since the entry of the decree that there is no longer any reasonable danger of abuses of the kind which the prohibition was designed to prevent. The Court in the *Swift* case, in holding that there had been an insufficient showing to warrant a requested change of this type, said (p. 119):

> The injunction, whether right or wrong, is not subject to impeachment in its application to the conditions that existed at its making. We are not at liberty to reverse under the guise of readjusting. Life is never static, and the passing of a decade has brought changes to the grocery business as it has to every other. The inquiry for us is whether the changes are so important that dangers, once substantial, have become attenuated to a shadow.

In like manner, if the Government sought a change in a consent decree which would extend its prohibitions to practices not covered by the original decree or which would radically alter the structure of the decree, the showing required

would approximate that necessary in order to obtain a decree in a litigated proceeding under the Sherman Act.

The change in the decree which the Government sought in the present case was wholly different in character. The decree prohibits Chrysler from acquiring an interest in a finance company but it also provides that Chrysler shall not be bound by this prohibition after January 1, 1941, unless by that date the Government shall have brought to a successful conclusion proceedings to end the existing affiliation between General Motors and GMAC. The change sought by the Government was to have the status of nonaffiliation continued to January 1, 1942, so as to prevent lapse of this prohibition prior to termination of its stock-divestment proceeding against General Motors.

Our previous statement of the provisions of the decree (*supra*, pp. 9–10) shows that it is framed, in general, upon the basis that the Government's proceedings against General Motors are to be the measure and test of the ultimate rights of the parties under the decree. The consent decree was entered without submitting the issues raised by the proceeding against appellants to the test of litigation. The decree provides, in substance, that the litigation against General Motors shall be substituted for such test and that the prohibitions of the decree shall be later adjusted to accord with

the adjudications made and the results achieved in the proceedings against General Motors.

In a decree framed upon this basis appellants were entitled to protection against undue delay in the prosecution of the proceedings against General Motors. Such protection might have been given by providing for suspension or termination of the prohibitions upon a showing of unreasonable delay by the Government in its prosecution of these proceedings (see R. 111). Another method of affording such protection, and the one actually adopted, was to set up a sort of timetable for the proceedings against General Motors. In the case of the prohibitions against coercive and discriminatory practices, the date set was January 1, 1940. If by that date General Motors had not been convicted in the criminal proceeding or a decree not subject to further review had not been entered against it, these prohibitions were to be suspended (*supra,* pp. 9–10). In the case of the prohibition against affiliation, the date set was January 1, 1941. If by that date a decree not subject to further review had not been entered ending General Motors' affiliation with GMAC, the prohibition was to be no longer operative. The Government kept within this timetable in its criminal proceeding against General Motors. It did not in its civil proceeding.

One objective of the provisions of the decree relating to affiliation was to have the right of the

Government to this kind of relief determined by the outcome of its litigation against General Motors. Another objective was to have this litigation completed by January 1, 1941. When the Government filed its motion for modification one or the other of these objectives would necessarily be defeated. We submit that the court below was warranted in concluding that the essential purposes of the decree as a whole would be better served by granting the motion and defeating the latter objective than by denying the motion and defeating the former objective.

The court, in passing upon the motion for modification, was also warranted in giving consideration to the question whether termination of the bar against affiliation would seriously impair the effective operation of the other prohibitions of the decree. Upon the conviction of General Motors and GMAC which occurred after entry of the decree and prior to the motion for modification, this question assumed particular importance because, by virtue of the convictions, it became established that appellants would continue to be bound by the prohibitions of the decree other than that against affiliation.[8]

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[8] While this would not be so if the convictions were reversed on appeal, the court below necessarily had to assume the validity of the judgment then outstanding in the same court.

It is also true that there are, under the decree, certain other possible avenues of escape open to appellants but they

A unique feature of the decree is that it provides for an elaborate registration system for finance companies. A company, upon registering, assumes certain obligations designed to safeguard retail automobile purchasers against oppressive or extortionate financing practices.[9] In return

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are too limited or conjectural to be of any real significance. These other possible avenues of escape are: (a) To apply successfully for modification of the decree, as authorized by ¶14 (R. 50); (b) To apply successfully to the court, after November 15, 1942, for vacation of the decree in whole or in part, as authorized by ¶18 (R. 52–53); (c) To obtain a suspension of the requirements of paragraphs 6 and 7 to the extent that the practices prohibited had not been ruled to be illegal in the criminal proceeding, as authorized by ¶12a (R. 48–49); (d) To show to the court that a competitor other than General Motors or Ford had sold 25% as many automobiles as Chrysler, that practices of such competitor, prohibited by the decree, put Chrysler at a competitive disadvantage, and that the United States had not diligently proceeded against such competitor to obtain an adjudication of the illegality of such practices, as authorized by ¶15 (R. 50–51).

[9] Among the obligations assumed upon registration are: (a) Not to accept assignments of, or to garnishee, wages or salaries to collect a deficiency judgment with respect to any noncommercial sale for less than $1,000; (b) Not to take a deficiency judgment with respect to a noncommercial sale where the purchaser has paid 50% of his obligation; (c) Not to collect from any retail purchaser an amount in excess of the actual losses and expenses caused by his failure to pay his obligation; (d) Not to make a higher charge for extending or revising a transaction than the pro-rata equivalent of the original finance charge; (e) Not to charge more than 5% of the delinquent installments for reinstating a delinquent account; (f) Not to take, as additional security, a lien on property other than the automobile purchased (R. 36–37).

for its assumption of these obligations, it receives certain benefits in that the decree permits Chrysler to furnish certain information, services, facilities, or privileges exclusively to registered finance companies (R. 33–34) and permits it to advertise that a retail finance plan approved by it is available through all registered finance companies (R. 41–42).

It is questionable whether the fair and free competition between finance companies which the decree seeks to bring about could be attained with affiliation existing between Chrysler and a particular finance company. In view of the dependence of Chrysler dealers upon the good will of Chrysler,[10] many dealers would, in order to win Chrysler's favor, finance through its affiliate. With affiliation, favored treatment may take many forms and detection is difficult and the suspicions which it would arouse would tend to weaken materially the system of fair dealing and equal opportunity for all contemplated by the registration provisions of the decree.

The allegation in the bill of complaint (R. 8) that each of the three great automobile manufacturers has engaged in a like conspiracy with its respective affiliated finance company, in other words, that there has been a common pattern of

[10] The bill of complaint alleges that the Chrysler dealer contracts are subject to cancellation at the will of Chrysler (R. 5).

behavior where affiliation exists, clearly indicates that the proceeding against appellants is based upon the view that affiliation gives rise to restraints of trade of the kind charged in the bill and prohibited by the consent decree. It is a fair inference, therefore, that termination of the bar against affiliation would seriously threaten the integrity of the decree as a whole.

The district court, in weighing the equities involved in the application for modification, was warranted in determining the objectives of the decree in the light of the allegations of the bill of complaint. Since a consent decree sets forth the relief which the parties have agreed shall be granted with respect to the charges of the bill, the court, when a change in such a decree is proposed, may and should look to these charges to determine the evils which the decree is designed to prevent. *United States* v. *Swift & Co.*, 286 U. S. 106, 115–116. And it makes no difference in this connection that the defendants have filed answers traversing the charges of the bill and that the decree recites that it shall not be considered an adjudication that the defendants have violated any law.[11]

If extending the period of the prohibition against affiliation would have imposed any serious burden upon Chrysler or if the Government had been unduly dilatory in prosecuting the civil pro-

[11] There was such traverse and recital both in the *Swift* case, 286 U. S. 106, 111, and in the present case (R. 29–30).

ceeding against General Motors, the court might have considered either of these circumstances sufficient reason for denying the Government's motion. But the facts before the court below showed no such burden and, as we point out later (*infra*, pp. 25–27), they showed no such undue delay.

At the hearing below appellants in effect conceded that they could not make any showing that a year's extension of the bar against affiliation would prove actually injurious. In general, their position was that they stood upon their assumed legal right not to have any change made in the decree which would in any measure increase their obligations thereunder.

While counsel for Chrysler asserted broadly that it was at a competitive disadvantage when General Motors owned a finance company and Chrysler did not (R. 89–90), the assertion was based solely on the fact that General Motors was participating in the profits of the business of automobile financing whereas Chrysler was barred from participating therein (R. 88).[12] Thus the only burden resulting from extension of the bar against affiliation which was even suggested was that Chrysler would be denied the right, during 1941, to participate in the profits of the business

[12] This fact might affect the respective over-all earnings of the two companies, but it would have no more effect upon competition between them in selling automobiles than would ownership by one, but not by the other, of a company manufacturing electric refrigerators, or airplanes, or any other of a myriad of different products.

of automobile financing.[13] But the injury, if any, resulting from thus temporarily closing this outlet for investment of surplus funds is highly speculative. As to the profitableness of such an investment, it is not only subject to the ordinary hazards of investment in a business enterprise,[14] but to the additional hazard of a proceeding by the Government, if it is successful in its civil proceeding against General Motors, to compel Chrysler to dispose of its finance-company investment (R. 94–95, 96). Moreover, counsel for Chrysler admitted that it had no present plans for acquiring an interest in a finance company (R. 89, 94, 115).

If an actual opportunity to make a favorable investment in a finance company arose during 1941,[15] the court, upon application by Chrysler (pursuant to ¶14) for modification of the extended bar against affiliation, could then reconsider the question of continuance of the bar beyond January

[13] In fact, no other injury could be legitimately suggested since the other prohibitions of the decree cut off, or are intended to cut off, other advantages arising from affiliation.

[14] In 1938, the year in which the decree was entered, the low price of the common stock of Commercial Credit was 23 and the high price was 59⅞ (*Moody's* 1940 Manual of Investments, p. 1581), a fluctuation in value from the low to the high of more than 150%. As to value today, the price range of this stock for the week ended October 4, 1941, was 23⅛–23¾ (N. Y. Times of October 6, 1941, p. 28).

[15] The fact that affiliation was currently enjoined would not bar Chrysler from making plans or arrangements to acquire an interest in a finance company if and when the prohibition terminated or was lifted by an order of this court.

1, 1941, in the light of the showing that such continuance is actually burdensome to Chrysler. The views of the district court in this connection are shown by the following colloquy with counsel for Chrysler (R. 115–116):

> The COURT. And it appears to me if the Chrysler Company is not proposing to go into the finance business they are not being hurt. Mr. Kelley, I can't see where you are being hurt a bit by an extension of the time in this decree.
>
> Mr. KELLEY. Because, if your Honor please, we have a right, as soon as the injunction as provided by this decree comes to an end, then to consider arrangements, and it may be very desirable to do so.
>
> The COURT. All right, consider your arrangements and come to the court and ask for a modification and show that you are being hurt by competition with General Motors or some company, and then it will be time enough for a court of equity to consider extending or curtailing the time. You make no showing now that you will be harmed one penny's worth.

The Chrysler brief (p. 12) quotes an excerpt from *United States* v. *International Harvester Co.*, 274 U. S. 693, 703, which, taken by itself, might indicate that a consent decree is in the nature of a composition between the parties not subject to alteration without their assent. *United States* v. *Swift & Co.*, 286 U. S. 106, definitely holds that a

consent decree does not have this effect. But the Government also urges that even if the decree in the instant case were treated as a composition, the basic composition was that the prohibition against affiliation, like the other prohibitions of the decree, should abide the outcome of the Government's litigation against General Motors (see R. 72, 87–88) and that the purpose of the time limitation of January 1, 1941, was to provide assurance against unreasonable delay in the proceedings against General Motors (see R. 111–112). The Government therefore submits that the order of the district court, while modifying the language of the decree, actually served to carry into effect the basic composition of the parties.

II

THE DISTRICT COURT DID NOT ERR IN ACTING UPON THE GOVERNMENT'S MOTION WITHOUT FIRST HEARING TESTIMONY SINCE ALL FACTS RELEVANT TO DETERMINATION OF THE MOTION WERE EITHER UNDISPUTED OR WITHIN THE COURT'S JUDICIAL NOTICE

At the hearing before the district court it developed that there were no relevant, disputed factual issues requiring the taking of proof.

The Government's motion and Chrysler's answer presented an issue as to whether the United States had proceeded with due diligence to require General Motors to divest itself of control of GMAC. Assuming *arguendo* that this issue was relevant, the facts bearing thereon were not in dispute.

The parties were in agreement that the Government's suit to terminate General Motors' affiliation with GMAC was instituted on October 4, 1940 (R. 56, 59) and there was no claim that any further steps had been taken therein prior to the hearing on the motion to modify the consent decree. The grounds set forth in said motion as justifying the Government in failing to bring this suit at an earlier date (R. 56), namely, that final disposition of the criminal proceeding against General Motors would shorten and simplify trial of the civil proceeding and would avoid the unnecessary burden and expense of a retrial of the same issues, raised no issue which required the taking of proof. Conspiracy to restrain interstate commerce in General Motors cars by excluding others than GMAC from the business of financing such cars in interstate commerce, as charged in the criminal proceeding, was the necessary foundation for the stock-divestment proceeding. If the criminal convictions were finally sustained the fact that the defendants had so conspired would be *res adjudicata* in the civil proceeding (*Local 167* v. *United States,* 291 U. S. 293, 294, 295, 298–299), and as a result it would be unnecessary to retry in this proceeding the complicated issues of law and fact relating to conspiracy.

We submit, therefore, that even if it be assumed that laches or undue delay in the civil pro-

ceeding against General Motors would be a ground for denying the motion to modify the consent decree, there were no factual issues relating to the question of laches which required the taking of proof.

The Government's motion alleged and Chrysler's answer denied that the parties, when the decree was entered, underestimated the length of time which would be required to bring such civil proceeding to a conclusion (R. 55, 60). But the court below did not rely upon, and did not regard the Government as relying upon, "mistake", in the sense that the terms of the decree fail to express the meaning which the parties intended (R. 105–106, 112). The Government concedes that the decision below must be supported wholly independently of the allegation that the parties underestimated the time required to terminate the civil proceeding against General Motors.

If the question whether the Government had diligently prosecuted the criminal proceeding against General Motors was relevant in the instant case, the facts bearing upon this question were undisputed. The accuracy of Government counsel's statement of the course of this proceeding (R. 74–76) was not questioned by counsel for Chrysler.[16] The district court was of the opinion

[16] The facts as thus stated were: The defendants filed a demurrer which was overruled by the district judge who heard the present case; he later disqualified himself and an-

from facts within its judicial notice (note 2, p. 6, *supra*) and within its actual knowledge (R. 108, 109–110) that the Government had diligently prosecuted the criminal proceeding (R. 103, 104, 110).

The motion for modification does not raise any question as to the *meaning* of the provisions of the decree relating to affiliation. Insofar as the motion raises a question as to the primary *purpose* of these provisions, such purpose is to be determined from the four corners of the decree, read in the light of the allegations of the bill of complaint upon which the decree is based.

A consent decree is not a contract; it is a judicial act. *United States* v. *Swift & Co.*, 286 U. S. 106, 115. While a consent decree is the product of preliminary agreement between the parties, an essential part of their agreement is that the parties shall invoke and submit to judicial action. They thus consent that the court shall exercise its own independent judgment as to the meaning or purposes of the decree which it enters. In the present case it is unnecessary to decide whether

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other district judge was assigned to the case; the latter reconsidered the demurrer, overruled it and took action on certain preliminary motions filed by defendants; trial of the cause began early in October 1939 and ended on November 17, 1939; the Government actively cooperated with defendants in reducing the record on appeal (which originally comprised several thousand pages both of testimony and exhibits); the case was set for argument on appeal on January 17, 1941.

it would be error to admit testimony concerning the views which the parties entertained concerning purpose at the time when they assented to the decree. The question is whether the district court abused its discretion when it acted upon the Government's motion without having first taken such testimony and whether this abuse of discretion necessitates reversal of its order modifying the consent decree.

The hearing before the district court indicated the futility in the instant case of taking testimony concerning the views of the parties as to purpose. As statements by counsel for Chrysler at the hearing strongly suggest, the purpose which the Government had in mind in acceding to the affiliation provisions was to have the bar against affiliation abide the outcome of its civil proceeding against General Motors (R. 87–88). Accordingly, even if appellants then entertained a different view, namely, that time was of the essence with respect to the date of January 1, 1941, in ¶ 12, there would be no meeting of mind by the parties upon which the court could rely for guidance and it would be required to make its own independent determination as to the primary purpose of the provisions relating to affiliation.

The error which appellants urge is, not that the district court barred them from offering evidence in opposition to the Government's motion, but that it granted the motion without requiring that it be

supported by formal proof (Chrysler brief, pp. 8–13). The Government's position is that the facts necessary to support the requested order of modification were before the district court on the hearing which was held and that it was then shown that these facts were either undisputed or within the court's judicial notice. Under these circumstances, to set the case down for the taking of evidence would be an empty formality.

If, however, this Court should be of the opinion that it was error to grant the motion for modification without having first required the presentation of formal proof, the Government submits that in that event the case should be remanded to the district court with directions to determine the Government's motion after the taking of evidence. Certainly if granting the motion prior to the taking of evidence is error, denying the motion prior thereto would be equally erroneous.

III

THERE WAS NO DEFECT OF PLEADING REQUIRING REVERSAL OF THE DISTRICT COURT'S ORDER

The Government by its motion did not seek relief upon the ground that the provision of the decree which it sought to have modified had been entered against it through its "mistake" and the district court did not treat the motion as one seeking relief upon this ground (R. 105–106, 112). Accordingly, Rule 60 (b) of the Rules of Civil

Procedure providing that the court may, on motion, relieve a party "from a judgment, order, or proceeding taken against him through his mistake" and that such motion must be made within six months of the entry of the judgment or order in question has no application.

Chrysler contends (br., pp. 17–18) that the Government, to secure the relief which it sought, was required to proceed by way of supplemental complaint. We submit that a motion was the proper form of proceeding. The Government was applying to the court for an order modifying the decree. Rule 7 (b) of the Rules of Civil Procedure provides: "An application to the court for an order shall be by motion." The Government's motion, moreover, conformed to the requirement of this rule that the motion "shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought."

The only difference in substance between proceeding by motion and proceeding by supplemental complaint is that Rule 15 (d) of the Rules of Civil Procedure provides for securing permission of the court, after notice to the adverse party, before filing a "supplemental pleading". But paragraph 14 of the consent decree authorizes "any of the parties to this decree to make application to the court at any time * * * for the modification" of the decree (R. 50). This provi-

sion expressly authorizing application to the court for modification of the decree rendered it unnecessary to secure the permission of the court before making such application. It was therefore wholly immaterial whether the Government designated its application for modification a motion or a supplemental complaint.

Notice of the hearing on the motion was served on appellants (R. 53, 54) and a written answer was filed by Chrysler (R. 59).

IV

THIS COURT SHOULD PASS UPON THE MERITS OF THE APPEAL NOTWITHSTANDING THE DISTRICT COURT'S FAILURE TO MAKE SPECIAL FINDINGS OF FACT

The district court did not make findings of fact or state its conclusions of law. While Rule 52 of the Rules of Civil Procedure provides that in all actions tried upon the facts without a jury the court shall find the facts specially and shall state separately its conclusions of law, failure to comply with such a requirement does not render the trial court's decree void. *Lawrence* v. *St. Louis-San Francisco Ry. Co.*, 274 U. S. 588, 591–592. Since the rule is in aid of appellate review, compliance therewith may be waived by the appellate court. In *Interstate Circuit, Inc.* v. *United States*, 304 U. S. 55, where this Court refused to pass upon the merits of the appeal because the trial court had failed to comply with the corre-

sponding provisions of Equity Rule 70½, the Court clearly regarded it as discretionary, depending upon the circumstances of the particular case, whether there should be remand because of noncompliance with the rule. This was also the view of the dissenting justices (304 U. S. 55, 58).

The present case will become moot on January 1, 1942. If this Court should refuse to pass upon the merits of the appeal because of noncompliance with Rule 52, the case will become moot before there can be any appellate review of the action taken by the district court. We submit that under these circumstances enforcement of the rule should be waived, particularly since failure to follow the rule has not significantly increased the burden of appellate review. The record is short, there is no conflicting testimony, and the questions presented for review are comparatively simple.

CONCLUSION

It is respectfully submitted that the decree of the district court should be affirmed.

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No. 40

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

CHRYSLER CORPORATION, DESOTO MOTOR CORPORATION, PLYMOUTH MOTOR CORPORATION, DODGE BROTHERS CORPORATION, AND CHRYSLER SALES CORPORATION,

Appellants,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA.

PETITION OF THE APPELLANTS FOR REHEARING AND FOR STAY OF ISSUANCE OF MANDATE.

SUGGESTION OF A DIMINUTION OF THE RECORD AND MOTION FOR A WRIT OF CERTIORARI.

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PETITION OF THE APPELLANTS FOR REHEARING AND FOR STAY OF ISSUANCE OF MANDATE.

Come now the above-named appellants, Chrysler Corporation, DeSoto Motor Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation, and Chrysler Sales Corporation, and present this, their petition for a rehearing of the above entitled cause and for an order staying issuance of the mandate of this Court. In support thereof appellants respectfully show:

Statement.

This is an appeal from a final decree of the District Court of the United States for the Northern District of

Indiana (R. 117-118), made December 21, 1940, modifying a final decree of the same court theretofore entered with the consent of the parties in November, 1938, in a suit in equity instituted by the United States under the Sherman Antitrust Act (R. 29-53). Appeal was allowed by the district judge for the Northern District of Indiana on February 14, 1941 (R. 121) and probable jurisdiction was noted by this Court on April 14, 1941, under the provisions of the Expediting Act, February 11, 1903, c. 544, sec. 2, 32 Stat. 823, as amended, 15 U. S. C. sec. 29, and section 238 of the Judicial Code, as amended, 28 U. S. C. sec. 345. Briefs were submitted and the case was argued October 24, 1941. A companion case, *Commercial Credit Co. et al.* v. *United States,* No. 41, was submitted on briefs. On December 8, 1941, this Court announced its decision as follows:

> Per Curiam: The Court orders that the appeals in these cases be dismissed for want of a quorum of Justices qualified to sit in them. The Chief Justice, Mr. Justice Roberts, Mr. Justice Murphy and Mr. Justice Jackson are unable to take part in the consideration or decision of these cases on the merits.

Effect of Dismissal Upon Appellants.—The result of the order of this Court is to deprive appellants of their statutory right of appeal and to leave in effect a decision of the District Court for the Northern District of Indiana that we believe is manifestly erroneous.

The modified decree from which appeal was taken prohibited appellants from owning, controlling or having an interest in a finance company after January 1, 1942, unless the Government, prior to that date, shall have obtained a final decree not subject to further review "requiring Gen-

eral Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation, and of all interest therein" (R. 46). There was and is no possibility of the Government securing such a decree before January 1, 1942. Therefore, when this Court dismissed the appeal the injury to appellants appeared to be only the continuing of the restraint imposed by section 12 of the decree until January 1, 1942. To appellants it seems fair to assume that the Court in dismissing the appeal because of the disqualification of the four Justices did so having in mind that the restraint on appellants would expire January 1, 1942.

Proceedings Subsequent to Entry of Order of Dismissal of Appeal by this Court.—The subsequent action of the Government and further order of the court below completely changed this aspect of the case in this Court. On December 15, 1941, one week after the dismissal of this appeal, the Government filed in the United States District Court for the Northern District of Indiana a new motion, a "Motion For Modification of the Final Decree and of the Final Decree as Modified". This new motion prays that the restraint contained in Section 12 of the decree be extended for an additional year to January 1, 1943, *i. e.*, that the restriction to which appellants gave their consent be extended without their consent and over their objection for a total of two years. A copy of the Government's motion appears in the accompanying Appendix, *infra*, p. 19.

In this new motion the Government without alleging any changed conditions of fact or of law is simply seeking a redrafting of the consent decree. This amply appears from the fact that after acknowledging the precise and specific terms of the first and second paragraphs of Sec-

tion 12 of the consent decree, the Government nevertheless alleges in the fifth paragraph of its motion:

> The primary purpose of the provisions of the decree relating to affiliation was to have the right of the plaintiff to prohibit affiliation between an automobile manufacturer and a finance company, under the circumstances set forth in the complaint upon which the consent decree is based, determined by the outcome of proceedings by the plaintiff to terminate the existing affiliation between General Motors Corporation and General Motors Acceptance Corporation. A subsidiary purpose was to protect respondents against undue delay by the plaintiff in prosecuting such proceedings by providing a specified date for bringing them to a conclusion. Circumstances arising since entry of the decree, not attributable to undue delay or laches by the plaintiff, have prevented bringing these proceedings to a conclusion by the date specified in paragraph 12, or by the date specified in paragraph 12 as modified by order of this Court. The essential purposes of the decree would be defeated if, under these circumstances, the prohibition against affiliation were allowed to lapse prior to final determination of the plaintiff's proceeding to end the affiliation between General Motors Corporation and General Motors Acceptance Corporation.

This excerpt states the substance of the motion so far as it may be regarded as advancing any ground for the relief prayed.

The final sentence of the quoted paragraph is important because it clearly displays the intention of the Government to cause the court below effectually to rewrite the consent decree of the parties in a manner which in substance will result in (a) the striking from the consent decree, and the rendering nugatory, of all provisions of the second paragraph of Section 12, and (b) presumably, in lieu thereof, the inclusion of Section 12 among the subsections which

are enumerated in Section 12a(3)i. All this under the pretext of accomplishing an asserted primary purpose and subsidiary purpose neither of which appear from, and both of which are contradicted by, the plain terms of the contract between the parties ratified by the court as a consent decree.

The appellant Chrysler Corporation together with its co-appellant subsidiaries (hereinafter, for brevity, referred to as Chrysler) filed an answer setting up as defenses: (1) Lack of jurisdiction in the trial court to proceed in the cause while the appeal was still pending in this Court, mandate not yet having been issued; (2) Demurrer—that the motion failed to state a claim upon which relief can be granted; and (3) Denial of substantially all allegations upon which the motion was based (App'x, p. 24).

At the argument on December 22, 1941, the trial court overruled the first two defenses. The Government then offered in evidence certified copies of the pleadings, motions and orders entered in its civil suit against General Motors Corporation and General Motors Acceptance Corporation.

Thereupon the court entered its order as follows:

> This matter came on to be heard by the Court on motion of the United States for modification of the modified final decree and the Court having heard argument of counsel and the Government having introduced its evidence and the defendants having requested a continuance in order to produce further evidence——
>
> It is ORDERED that the hearing be and the same is hereby continued until the 16th day of February 1942.
>
> It is further ORDERED that pending the final disposition of the Government's motion the provisions of the decree enjoining Chrysler Corporation from acquiring an interest in a finance company shall remain in full force and effect notwithstanding Paragraph 12 of said decree.

All of this is NOW ORDERED, ADJUDGED and DECREED this 22nd day of December, 1941.

Defendants granted exception.

THOMAS W. SLICK,
Judge of the United States District Court for the Northern District of Indiana.

Reasons for Granting Petition for Rehearing.

1. *The question on the merits is one of general importance.*—There is presented the important question whether, after entry of a consent decree, the Government, without allegation or proof of changed conditions or unlawfulness under the Sherman Act, may properly impose upon the defendants additional restrictions plainly repugnant to the terms of the agreement approved by the parties and the court and embodied in the consent decree.

2. *Dismissal of the appeal will deprive appellants of their statutory right of review.*—By statute appellants are given the right of appeal to this Court including a decision by this Court of the questions properly presented on such appeal. This Court has recognized that by the Expediting Act of February 11, 1903, 32 Stat. 823, as amended, 15 U. S. C. sec. 29 and Section 238 of the Judicial Code, as amended, 28 U. S. C. sec. 345, Congress sought to ensure speedy disposition of suits in equity by the United States under the Anti-Trust Act. *United States* v. *California Canneries,* 279 U. S. 553, 558. But by the same Act the Congress took all appellate jurisdiction of such suits from the Circuit Courts of Appeals. *Swift & Co.* v. *United States,* 276 U. S. 311, 323. As a result of the dismissal of their appeal, appellants not only have been denied review in this Court but have been effectually prevented from obtaining any judicial review of the order of the trial judge that is—as we believe amply appears from the briefs filed in this Court—in conflict with the prior decisions of this Court

and repugnant as well to the elementary principles of due process.

3. *The general rule of disqualification of judges for interest must here yield to the exception which is equally well-established and recognizes the necessity of preserving appellants' statutory right of appeal.*—In causing the dismissal of this appeal it may be that the recusant Justices have overlooked the fact that to the general rule based on the principle that no man should judge his own case there is an equally established exception. Under this exception it is settled that a judge deeming himself otherwise disqualified nevertheless owes to the litigant a higher duty to preserve the statutory right to adjudication and must therefore participate in the consideration and decision of a case when such participation is essential to the exercise of the jurisdiction of the only tribunal in which that statutory right may be secured.

In *Evans* v. *Gore*, 253 U. S. 245 (involving the constitutionality of federal income taxes on the salaries of the federal judiciary) this Court, speaking through Mr. Justice Van Devanter, said (pp. 247-248):

> Because of the individual relation of the members of this court to the question, thus broadly stated, we cannot but regret that its solution falls to us; and this although each member has been paying the tax in respect of his salary voluntarily and in regular course. But jurisdiction of the present case cannot be declined or renounced. The plaintiff was entitled by law to invoke our decision on the question as respects his own compensation, in which no other judge can have any direct personal interest; and there was no other appellate tribunal to which under the law he could go. He brought the case here in due course, the Government joined him in asking an early determination of the question involved, and both have been heard at the bar and through printed briefs. In this situation, the only

course open to us is to consider and decide the cause.—a conclusion supported by precedents reaching back many years.

In *Miles* v. *Graham,* 268 U. S. 501, all nine of the Justices participated although the pecuniary interests of five in the tax on their respective salaries were directly affected. And in *O'Malley* v. *Woodrough,* 307 U. S. 277, the taxability of the salaries of four of the participating Justices was directly involved. All except Mr. Justice McReynolds took part in the consideration and decision of the case. In *Tumey* v. *Ohio,* 273 U. S. 510, after recognizing the general rule that officers acting in a judicial or quasi-judicial capacity are disqualified by their interest in a controversy, the Court said (p. 522):

> Then the circumstance that there is no judge not equally disqualified to act in such a case has been held to affect the question. *Wheeling* v. *Black,* 25 W. Va. 266, 280; *Peck* v. *Freeholders of Essex,* 20 N. J. L. 457; *Dimes* v. *Grand Junction Canal,* 3 H. L. C. 759 (see Baron Parke's Answer for the Judges, pp. 785, 787); Year Book, 8 Henry 6, 19, s. c. 2 Roll. Abridg. 93; *Evans* v. *Gore,* 253 U. S. 245, 247; *Stuart* v. *Mechanics' & Farmers' Bank,* 19 Johns. 496; *Ranger* v. *Railroad,* 5 H. L. C. 72.

As the opinion in *Evans* v. *Gore, supra,* indicates, the precedents are numerous.

In *Philadelphia* v. *Fox,* 64 Pa. 170, the court held (p. 185):

> The true rule unquestionably is that wherever it becomes necessary for a judge to sit even where he has an interest—where no provision is made for calling another in, or where no one else can take his place—it is his duty to hear and decide, however disagreeable it may be. The rights of the other party require it: 2 Roll. Ab. 93; Dimes *v.* Grand Junction Railroad, 3 House of Lords Cases 759.

In *State ex rel. Null* v. *Polley,* 34 So. Dak. 565, the defendant secretary of state filed objections to further proceedings on a petition for a writ of prohibition to prevent him from

certifying nominations preliminary to an election. His ground was that three of the five justices were directly interested in that their current terms of office might be extended as a result of their decision. In overruling this contention the court said (p. 569):

> If three of the judges of this court are disqualified, the remaining two are powerless to pronounce a decision upon the rights of the parties in this case. Neither the Constitution nor any law of this state provides for the calling in a judge of another court or member of the bar to act in the place of a disqualified member of this court. A clearer case of absolute necessity on the part of the judges to act could hardly be conceived. Under any other rule, the parties to this controversy would be without a forum in which their respective rights could be determined.

Referring to its decision on the merits refusing the writ, the court said (p. 570):

> But, even if our conclusion had been the reverse, the rule of necessity would have been the same, and we should have felt compelled to disregard the objections and render a decision. Had we declined to act in such case, plaintiff would have been without a remedy, and defendant, whether his proposed acts were legal or illegal, would be out of reach of the law, and would be a law unto himself. In such cases the rule of disqualification of judges is deemed of less importance than the denial of the constitutional right to a forum in which rights may be adjudicated. And, however, embarrassing the situation may be to us, we are unanimously of opinion that this court should not abdicate its functions and duties in any case, where such action would, in effect, deprive the citizen of his constitutional rights.

The opinion of the same court in *McCoy* v. *Handlin*, 35 S. D. 487, 502-506, is valuable for its extended consideration of the 'authorities.

In *In the Matter of Leefe,* 2 Barb. Ch. 39, the chancellor, because the defendant was his brother, had earlier referred the matter to the vice chancellor of the first circuit who entered a decree affecting the defendant in his official character only. The defendant appealed. Chancellor Walworth said:

> As the constitution gives to parties an appeal to the chancellor from all inferior equity tribunals, and the legislature has made no provision authorizing any other person to sit for him, in a case where that officer is related to one of the parties, the chancellor is bound to hear the appeal, even where a near relative is personally interested. This was done by Chancellor Kent; who took jurisdiction of, and heard, a litigated cause in which his brother was one of the parties, and personally interested. He also heard and decided the case of *Mooers v. White,* (6 *John. Ch. R.* 360) where his brother-in-law was the complainant; the legislature not having authorized any other person to sit for the chancellor in such a case. The statute, it is true, prohibits any judge from sitting, where he is related to either of the parties within the ninth degree, of affinity or consanguinity; but it has not provided for any other person, or tribunal, to exercise the appellate power which is given to the chancellor, by the constitution, in such cases. The constitution must, therefore, control; as that is the paramount law.

The exception based on necessity has also been invoked in *Brinkley* v. *Hassig,* 83 F. 2d 351, 357; *Georgia C. Telephone Co.* v. *Georgia Pub. Serv. Com'n,* 8 F. Supp. 434, 436; *State ex rel. Cook* v. *Houser,* 122 Wis. 534, 539; *State ex rel. Wickham* v. *Nygaard,* 159 Wis. 396, 398, 400; *State ex rel.* v. *Humphreys,* 163 Tenn. 20, 22-23; *Moulton* v. *Byrd,* 224 Ala. 403, 405; *Galey* v. *Board of Commissioners,* 174 Ind. 181, 184; *Gordy* v. *Dennis,* 176 Md. 106, 108-110; *Long* v. *Watts,* 183 N. C. 99, 102; *Dimes* v. *Grand Junction Canal,* 3 H. L. C. 759, 787, 788, 10 Eng. Repr. R. 301, 313; see *Mon-*

tana Power Co. v. *Public Service Commission,* 12 F. Supp. 946, 949; *Bliss* v. *Caille Brothers Co.,* 149 Mich. 601, 609-610; *Pearce* v. *Atwood,* 13 Mass. 324, 340; *Metsker* v. *Whitsell,* 181 Ind. 126, 137-138; *Stafford* v. *County Court,* 58 W. Va. 88, 93; *Price* v. *Fitzpatrick,* 85 W. Va. 76, 78-80; *Ison* v. *Western Vegetable Distributors,* 48 Ariz. 104, 118; *Oakley* v. *Aspinwall,* 3 N. Y. 547, 555; *Ten Eick* v. *Simpson,* 11 Paige 177, 179; *Paddock* v. *Wells,* 2 Barb. Ch. 331, 335; *The People* v. *Edmonds,* 15 Barb. 529, 530-531; *Between the Parishes of Great Charte and Kennington,* 2 Strange 1173, 1174, 93 Eng. Repr. R. 1107; *The Mayor of London* v. *Markwick,* 11 Mod. 164; 1 Freeman on Judgments (5th ed.) sec. 330, p. 661.

It is submitted that on the authorities and on principle the necessity of a quorum to preserve appellants' statutory right of appeal requires and justifies the participation in the consideration of this case of Justices who might otherwise deem themselves disqualified to sit.

4. *The appeal continues to present an actual and pending controversy between adverse interests and the case is not moot.*—As clearly appears from the provisions of the order of the trial court entered December 22, 1941, *supra,* p. 5, the restraint of the injunctive decree brought here by appellants' appeal has now been extended until final disposition by the trial court of the Government's new motion and until at least as late as February 16, 1942. It thus is apparent that the restraint imposed by the modified decree from which appellants took their appeal is now in continuing full force and effect and the case will not become moot as of January 1, 1942.

To the end that the record in this Court may show that the case is not moot the appellants are filing herewith their Suggestion of a Diminution of the Record and Motion for a Writ of Certiorari, *infra,* p. 15.

The Government's "Motion for Modification of the Final Decree and of the Final Decree as Modified" filed December 15, 1941, in the District Court seeks the same relief as that which is in question on the appeal dismissed by this Court. Because it demands that the restriction against appellants be extended for an additional year and adduces no new ground therefor, the questions to be decided in the final disposition of this new motion of the Government will be the same as those here and now presented. Thus, unless rehearing be granted and this appeal be determined, appellants will be put to the expense and delay incident to relitigation in the trial court and appeal to this Court to raise exactly the same question. At the same time, appellants, though subjected to such expense and delay, must so proceed with no certainty that they will not again be met with a dismissal of their appeal on the ground that there is not a quorum of Justices who deem themselves qualified to sit.

On the other hand, if a quorum may now be obtained to decide this case, it is apparent that the determination of the questions presented will control in the disposition of the Government's new motion in the trial court and in large degree minimize, if indeed it does not entirely resolve, the issues there presented.

Reason for Allowance of Order Staying Issuance of Mandate.

It is apparent that protection of the rights of appellants requires that the mandate be withheld pending final disposition of the cause in this Court. If this Court shall grant the accompanying motion for certiorari requiring certification

to this Court of all motions, papers and orders filed in the trial court subsequent to the entry of the Court's order dismissing the appeal entered December 8, 1941, this Court will have before it the entire record enabling it to make disposition of all issues in the case.

In this connection it is important to note that the trial court has gone beyond merely keeping the case in *status quo* and has assumed, over objection, to exercise general jurisdiction while the appeal of the case is still pending in this Court.

The trial court, of course, had power to enter such orders as it might, in its discretion, deem necessary to preserve the *status quo*. But the order entered December 22, 1941, was plainly not so limited. It is, therefore, in conflict with the established rule, essential to orderly procedure, that an appeal suspends the power of the court below to proceed further in the cause (*Hovey* v. *McDonald*, 109 U. S. 150, 156-157; *Newton* v. *Consolidated Gas Co.*, 258 U. S. 165, 177; *United States* v. *Radice*, 40 F. (2d) 445, 446; *The Midland Terminal Ry. Co.* v. *Warinner*, 294 Fed. 185, 189) and that an appeal must be regarded as pending and undisposed of in this Court until the mandate issues. *Merrimack River Sav. Bk.* v. *Clay Center*, 219 U. S. 527, 536.

It is submitted that on the facts of this case stay of the issuance of mandate is appropriate as an aid to preservation of the appellate jurisdiction of this Court, protection of the rights of appellants and the orderly disposition of the case.

For the foregoing reasons, it is respectfully urged that this petition for rehearing be granted and that issuance of the mandate of this Court be stayed until final disposition

of the cause and that the decree of the United States District Court for the Northern District of Indiana be, upon further consideration, reversed.

Respectfully submitted,

NICHOLAS KELLEY,
WILLIAM STANLEY,
CARL MCFARLAND,
Counsel for Appellants.

LARKIN, RATHBONE & PERRY,
CUMMINGS & STANLEY,
Of Counsel.

December, 1941.

I, William Stanley, counsel for the above-named appellants, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

WILLIAM STANLEY.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 40

CHRYSLER CORPORATION, DESOTO MOTOR CORPORATION, PLYMOUTH MOTOR CORPORATION, DODGE BROTHERS CORPORATION, AND CHRYSLER SALES CORPORATION,

Appellants,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA.

SUGGESTION OF A DIMINUTION OF THE RECORD AND MOTION FOR A WRIT OF CERTIORARI.

May It Please the Court:

The appellants suggest that there is a diminution of the record in the above-entitled cause and respectfully move that this Honorable Court issue its writ of certiorari directed to the District Court of the United States for the

District Court for the Northern District of Indiana dated December 22, 1941.

NICHOLAS KELLEY,
WILLIAM STANLEY,
CARL MCFARLAND,
Counsel for Appellants.

LARKIN, RATHBONE & PERRY,
CUMMINGS & STANLEY,
Of Counsel.

I, William Stanley, counsel for the appellants in the above-entitled cause, do solemnly swear that the facts recited in the foregoing "Suggestion of a Diminution of the Record and Motion for a Writ of Certiorari" are true.

WILLIAM STANLEY.

Subscribed and sworn to before me this 31st day of December, 1941.

RUTH M. KELM,
Notary Public, D. C.

[SEAL.]

My Commission Expires December 2, 1945.

APPENDIX.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVISION.

Civil No. 9.

UNITED STATES OF AMERICA, Complainant,

vs.

CHRYSLER CORPORATION, et al., Defendants.

MOTION FOR MODIFICATION OF THE FINAL DECREE AND OF THE FINAL DECREE AS MODIFIED—Filed December 15, 1941.

The United States of America, plaintiff in the above entitled action, by Alexander M. Campbell, United States Attorney for the Northern District of Indiana, and Edmond J. Ford, Special Assistant to the Atttorney General of the United States, both acting under the direction of the Attorney General, represent and move as follows:

On November 15, 1938, a final decree was entered by consent in this case. The first paragraph of paragraph 12 of this decree enjoined the respondent manufacturer from making loans to, and, subject to certain limitations, from purchasing the securities of, the respondent finance company or any other finance company. The second paragraph of paragraph 12 provided that if an effective final order or decree should not have been entered by January 1, 1941, requiring General Motors Corporation to divest itself of all ownership and control of General Motors Acceptance Corporation, then nothing in the decree should preclude the manufacturer from acquiring and retaining ownership of, control over, or an interest in, any finance company.

On December 21, 1940, this Court, after a hearing, entered an order modifying the second paragraph of paragraph 12 by changing the date therein set forth with respect to entry of an effective final order or decree against General Motors Corporation, from January 1, 1941, to January 1, 1942.

The consent decree contains numerous provisions the effect of which is that, while the various prohibitions of the decree are to be presently effective, their ultimately binding effect is to be dependent upon the outcome of certain proceedings by the plaintiff under the antitrust laws against General Motors Corporation and its subsidiary finance company, General Motors Acceptance Corporation. The consent decree was entered without submitting the issues raised by the proceeding against respondents to the test of litigation. The decree provides, in substance, that the plaintiff's litigation against General Motors Corporation shall be substituted for such test and that the prohibitions of the decree shall later be adjusted to accord with the adjudications made and the results achieved in the proceedings against General Motors Corporation.

The primary purpose of the provisions of the decree relating to affiliation was to have the right of the plaintiff to prohibit affiliation between an automobile manufacturer and a finance company, under the circumstances set forth in the complaint upon which the consent decree is based, determined by the outcome of proceedings by the plaintiff to terminate the existing affiliation between General Motors Corporation and General Motors Acceptance Corporation. A subsidiary purpose was to protect respondents against undue delay by the plaintiff in prosecuting such proceedings by providing a specified date for bringing them to a conclusion. Circumstances arising since entry of the decree, not attributable to undue delay or laches by the plaintiff, have prevented bringing these proceedings to a conclusion by the date specified in paragraph 12, or by the date specified in paragraph 12 as modified by order of this Court. The essential purposes of the decree would be defeated if, under these circumstances, the prohibition against affiliation were allowed to lapse prior to final determination of the plaintiff's proceeding to end the affiliation between General Motors Corporation and General Motors Acceptance Corporation.

The plaintiff represents that it has proceeded with due diligence to procure a decree requiring General Motors Corporation to divest itself of ownership and control of

General Motors Acceptance Corporation; that the entry of such a decree is dependent upon proving certain involved facts and establishing numerous disputed principles of law; that the issues involved in a proceeding to obtain such a decree have been to a great extent involved in a criminal proceeding instituted in this Court by an indictment returned on May 27, 1938, to wit, *United States of America* v. *General Motors Corporation,* Criminal Case No. 1039; that the issues in such civil proceeding would be substantially affected and settled by the final disposition of said criminal proceeding; that after numerous preliminary pleas, motions and hearings and a long jury trial verdicts of guilty were returned against General Motors Corporation and General Motors Acceptance Corporation and judgments of conviction were entered against them on November 17, 1939; that after an appeal by the convicted defendants to the Circuit Court of Appeals for the Seventh Circuit that court on May 1, 1941, affirmed the convictions and subsequently denied a petition for rehearing; that the defendants thereupon filed a petition for a writ of certiorari in the Supreme Court of the United States; that the Supreme Court denied said petition on October 13, 1941, and denied a petition for rehearing on November 10, 1941.

The plaintiff on October 4, 1940, filed a proceeding (Civil Action No. 2177) in the District Court of the United States for the Northern District of Illinois, Eastern Division, against General Motors Corporation and General Motors Acceptance Corporation to compel General Motors Corporation to divest itself of all ownership and control of General Motors Acceptance Corporation; that many important issues in this civil action will be rendered *res adjudicata* by the final determination of the criminal proceeding against the same defendants; that such final determination will simplify and shorten the trial in the civil suit; that to have proceeded with the trial of the civil suit before the criminal action was finally disposed of would have greatly lengthened the time of trial, would have involved great additional and unnecessary expense to all parties, and would have resulted in a needless retrial of many of the same issues of law and fact.

The plaintiff further represents that it has attempted to expedite the trial of the civil case against General Motors now pending in the Northern District of Illinois, Eastern Division, but that the court in that District on July 15, 1941, upon motion of the defendants and over the objection of the Government, granted a continuance to the defendants to run until further order of the court. This motion was granted primarily because the court was of the opinion that final adjudication of the criminal case against General Motors Corporation would greatly simplify trial of the civil proceeding. On December 2, 1941, the Government presented a motion asking the court to set an early date for the filing of all preliminary pleadings and motions and a date for disposing of the same, so that the case would be ready for trial on the issues. The defendants at the same time filed a motion for further delay and the court, after a hearing, continued the case until January 15, 1942, and held in abeyance the Government's motion.

By paragraph 14 of the consent decree in this case, this Court retained jurisdiction of the cause for the purpose of enabling any party to apply to the court at any time for modification of the decree and, aside from this provision, the Court inherently has the right to modify a decree, whether entered by consent or otherwise, as the ends of justice may require.

The plaintiff avers that it will prosecute with diligence the proceeding against General Motors Corporation now pending in the Northern District of Illinois but that the cause cannot be brought to a final conclusion by January 1, 1942.

The plaintiff therefore moves that the second paragraph of paragraph 12 of the consent decree in this case, as modified by this Court, be again modified in such manner that the words of said paragraph, to wit, "on or before January 1, 1942", be modified to read "on or before January 1, 1943", with the result that said decree shall be so modified that the second paragraph of paragraph 12 shall read as follows:

> It is an express condition of this decree that notwithstanding the provision of the preceding paragraph of

this paragraph 12 and of any other provisions of this decree, if an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1943, requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation and of all interest therein, then, and in that event, nothing in this decree shall preclude the manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company and with the dealers in the manner provided in this decree or in any order of modification or suspension thereof entered pursuant to paragraph 12a. The Court, upon application of the respondents or any of them, will enter an order or decree to that effect at the foot of this decree, and the right of any respondent herein to make the application and to obtain such order or decree is expressly conceded and granted.

ALEXANDER M. CAMPBELL,
United States Attorney for the Northern District of Indiana;
EDMOND J. FORD,
Special Assistant to the Attorney General,
Attorneys for the Plaintiff.

AFFIDAVIT IN SUPPORT OF MOTION FOR MODIFICATION OF FINAL DECREE.

I, Edmond J. Ford, being duly sworn, do hereby make oath and depose as follows:

I have read the attached Motion for Modification of the Final Decree and of the Final Decree as Modified in the above entitled case and am familiar with the facts therein set forth and the circumstances under which the aforesaid motion is filed. I hereby make oath that the statements therein set forth are true. The sources of my information are original documents and facts learned in my handling

of the matters referred to in the aforesaid motion as Special Assistant to the Attorney General of the United States.

(Signed) EDMOND J. FORD,
Special Assistant to the Attorney General.

UNITED STATES OF AMERICA,
District of Columbia, ss:

December 11, 1940.

Personally appeared before me, Edmond J. Ford, to me known, and signed the aforegoing affidavit in my presence, and being duly sworn did make oath to the truth of the statement aforesaid signed by him.

(Signed) DOROTHY J. HEALE,
Notary Public.

My Commission Expires October 2, 1944.

IN UNITED STATES DISTRICT COURT

[Title omitted]

ASWER OF CHRYSLER CORPORATION, DESOTO MOTORS CORPORATION, PLYMOUTH MOTOR CORPORATION, DODGE BROTHERS CORPORATION AND CHRYSLER SALES CORPORATION TO MOTION FOR MODIFICATION OF THE FINAL DECREE AND OF THE FINAL DECREE AS MODIFIED—Filed December 22, 1941.

The defendants Chrysler Corporation, DeSoto Motors Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation, by S. J. Crumpacker and Larkin, Rathbone & Perry, their attorneys, answer the Motion for Modification of the Final Decree and of the Final Decree as Modified, as follows:

I.

1. The plaintiff fails to state in its motion a claim against these defendants upon which the relief it seeks can be granted.

II.

2. This Court is without jurisdiction to grant the plaintiff's Motion for Modification of the Final Decree and of the Final Decree as Modified. Upon perfection of the appeal from the Decree of this Court, as modified by its Order of December 21, 1940, all jurisdiction of this cause was transferred to the Supreme Court of the United States. Until

mandate issues from the Supreme Court of the United States, the appeal is there pending and this Court is without power to modify the decree which is before the Supreme Court.

III.

3. Defendants admit that on November 15, 1938, this Court entered a Final Decree upon the consent of the parties, without any testimony having been taken and without any findings of fact, but they deny that the contents or purpose or effect of the Final Decree are as stated in the motion, and they respectfully beg leave to refer to the original Final Decree for the exact contents and purpose and effect thereof.

4. Defendants admit that on December 21, 1940, this Court entered an Order entitled Order of Modification of Final Decree, purporting to change the date appearing in the second paragraph of Section 12 of said Final Decree from "January 1, 1941" to "January 1, 1942", and they respectfully beg leave to refer to the original Order for the exact contents thereof. Defendants allege that they appealed from that Order to the United States Supreme Court, that on December 8, 1941, that Court entered the following Order:

"*Per curiam:* The Court orders that the appeals in these cases be dismissed for want of a quorum of Justices qualified to sit in them. The Chief Justice, Mr. Justice Roberts, Mr. Justice Murphy and Mr. Justice Jackson are unable to take part in the consideration or decision of these cases on the merits."

and that Defendants will duly apply for a rehearing of that appeal.

5. Defendants deny that circumstances arising since entry of the Final Decree, not attributable to undue delay or laches by the plaintiff, have prevented the plaintiff's bringing proceedings against General Motors Corporation to a conclusion by the date specified in Section 12 of the Final Decree or by the date specified in Section 12 of the Final Decree as Modified; deny that the essential purpose, or any purpose, of the Final Decree would be defeated if the prohibitions against affiliation were allowed to lapse prior

to final determination of the plaintiff's proceeding to end the affiliation between General Motors Corporation and General Motors Acceptance Corporation, and deny that plaintiff has proceeded with due diligence to procure a decree requiring General Motors Corporation to divest itself of ownership of or control over General Motors Acceptance Corporation. Defendants allege that said civil suit is not at issue, and that General Motors Corporation and General Motors Acceptance Corporation have until January 15, 1942, to file their answer or to make any motion with respect to the complaint, and that the plaintiff not only has failed and neglected to expedite trial of the civil suit, but has failed and neglected to proceed in that suit so as to dispose of practice motions and other preliminary matters and to frame the issues for trial.

6. Defendants deny that the issues involved in a proceeding to obtain a civil decree against General Motors Corporation have been to a great extent involved in Criminal Case No. 1039, or that the issues in the civil proceeding will be substantially affected and settled by final disposition of said criminal proceeding. On the contrary, defendants allege that the issues involved in the plaintiff's civil suit against General Motors Corporation, in so far as they concern the effectiveness of the second paragraph of Section 12 of the Final Decree, were not involved or settled in plaintiff's criminal case against General Motors Corporation except to the extent that the Court by its charge to the jury in that case ruled against the plaintiff on the issue of the propriety of General Motors Corporation having a finance company. In said case, Criminal Case No. 1039, the Court charged the jury on November 15, 1939, being more than a year prior to January 1, 1941, as follows:

"It is not unreasonable for the General Motors Company to have a finance company. * * * They have a perfect right to have a finance company and to recommend its use. * * *."

7. Defendants deny that for the plaintiff to have proceeded with the trial of the civil suit against General Motors Corporation before the criminal action was finally disposed of would have been undesirable and they allege that the

plaintiff, itself, represented to the District Court for the Northern District of Illinois, Eastern Division, in opposing continuances of the civil suit long before the criminal case was finally disposed of that it was desirable to proceed with both cases simultaneously. Defendants further allege that the plaintiff, by representing to this Court, in its Motion for Modification of Final Decree in this case in December, 1940, that trial of the civil suit against General Motors Corporation would be facilitated by trial first of the Criminal Case No. 1039, enabled General Motors Corporation to obtain continuances of the civil suit although plaintiff in that suit took with the Court in Illinois a position opposite to what it took with this Court in December, 1940, and opposite to what it takes with this Court now.

8. Defendants allege that before the parties consented to the Final Decree of November 15, 1938, they discussed at length the period during which defendants should be restrained from having an interest in a finance company while General Motors Corporation was not similarly restrained; that the possibilities of delay were canvassed in detail; that both parties gave their consent to the Final Decree with full knowledge, and that consent was not given or obtainable except on the basis of said date. Edmund J. Ford, upon whose affidavit the plaintiff's motion is made, was not present at the conferences or negotiations at which the parties determined the form of the Final Decree.

9. Defendants beg leave to refer to all of the records of the Court in this case, with the same force and effect as though the same were set forth at length herein.

Wherefore, these answering defendants respectfully pray:

(1) That said motion be dismissed forthwith; or

(2) That, if said motion be not dismissed, plaintiff be required to plead with particularity any changed basic conditions of fact or law upon which it relies; and that defendants, thereafter, be given sufficient notice and opportunity to prepare their response and defense; or

(3) That, if said motion be not dismissed and if plaintiff is not required to plead further, the motion now filed herein

be set down for hearing for the taking of proof on the merits, upon such terms and conditions as will assure defendants due notice of the issues and adequate opportunity to prepare its response or defense thereto.

There is filed herewith a brief memorandum of points and authorities in support hereof.

Dated: December 22, 1941.

PARKER CRABILL CRUMPACKER,
MAY CARLISLE & BEAMON,
S. J. CRUMPACKER,
LARKIN, RATHBONE & PERRY,
NICHOLAS KELLEY,
70 Broadway, New York, N. Y.,
Attorneys for Defendants Chrysler Corporation, DeSoto Motors Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation.

STATE OF INDIANA,
St. Joseph County, ss:

William Stanley, being duly sworn, says: That he is an attorney and was at the time of the negotiations and entry herein of the Final Decree one of the attorneys for the above-named defendants, Chrysler Corporation, DeSoto Motors Corporation, Plymouth Motor Corporation, Dodge Brothers Corporation and Chrysler Sales Corporation; that he was present at substantially all of the conferences and negotiations at which the parties agreed upon the form of the Final Decree entered herein on the consent of the parties; that he has read and knows the contents of the foregoing Answer to the Complainant's Motion for Modification of Final Decree and of the Final Decree as Modified therein; that said Answer is true of his own knowledge.

WILLIAM STANLEY.

Sworn to before me this 22nd day of December, 1941.
MARGARET LONG.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA, SOUTH BEND DIVISION

Civil No. 9

UNITED STATES OF AMERICA, Complainant,

v.

CHRYSLER CORPORATION, et al., Defendants

ORDER—December 22, 1941

This matter came on to be heard by the Court on motion of the United States for modification of the modified final decree and the Court having heard argument of counsel and the Government having introduced its evidence and the defendants having requested a continuance in order to produce further evidence—

It is Ordered that the hearing be and the same is hereby continued until the 16th day of February 1942.

It is further Ordered that pending the final disposition of the Government's motion the provisions of the decree enjoining Chrysler Corporation from acquiring an interest in a finance company shall remain in full force and effect, notwithstanding Paragraph 12 of said decree.

All of this is now Ordered, Adjudged and Decreed this 22nd day of December, 1941. Defendants granted Exception.

THOS. W. SLICK,

Judge of the United States District Court for the Northern District of Indiana.

(8037)

No. 40. CHRYSLER CORPORATION ET AL. *v.* UNITED STATES; and

No. 41. COMMERCIAL CREDIT CO. ET AL. *v.* UNITED STATES. Appeals from the District Court of the United States for the Northern District of Indiana. Argued October 24, 1941. Decided December 8, 1941. *Per Curiam:* The Court orders that the appeals in these cases be dismissed for want of a quorum of Justices qualified to sit in them. The CHIEF JUSTICE, MR. JUSTICE ROBERTS, MR. JUSTICE MURPHY, and MR. JUSTICE JACKSON are unable to take part in the consideration or decision of these cases on the merits. *Mr. Nicholas Kelley,* with whom *Messrs. William Stanley, Carl McFarland,* and *S. J. Crumpacker* were on the brief, for appellants in No. 40; and *Messrs. Duane R. Dills* and *W. Russell Mules* submitted for appellants in No. 41. *Assistant Attorney General Arnold,* with whom *Assistant Solicitor General Fahy* and *Mr. Charles H. Weston* were on the brief, for the United States.